

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 623

OKLAHOMA TAX COMMISSION OF THE STATE OF OKLAHOMA,
PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 624

OKLAHOMA TAX COMMISSION OF THE STATE OF OKLAHOMA,
PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 625

OKLAHOMA TAX COMMISSION OF THE STATE OF OKLAHOMA,
PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 5, 1943.

CERTIORARI GRANTED FEBRUARY 15, 1943.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1942

No. 623

OKLAHOMA TAX COMMISSION OF THE STATE OF
OKLAHOMA, PETITIONER,

v.s.

THE UNITED STATES OF AMERICA

No. 624

OKLAHOMA TAX COMMISSION OF THE STATE OF
OKLAHOMA, PETITIONER,

v.s.

THE UNITED STATES OF AMERICA

No. 625

OKLAHOMA TAX COMMISSION OF THE STATE OF
OKLAHOMA, PETITIONER,

v.s.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE TENTH CIRCUIT

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[fol. 1]

**IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE TENTH CIRCUIT**

No. 2558

UNITED STATES OF AMERICA, Appellant,

vs.

**OKLAHOMA TAX COMMISSION OF THE STATE OF OKLAHOMA,
Appellee**

**STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO
RELY ON APPEAL, AND DESIGNATION OF PARTS OF THE RECORD
TO BE PRINTED—Filed May 15, 1942**

Comes now the above named appellant, United States of America, by William H. Landram, Assistant United States Attorney for the Eastern District of Oklahoma, and pursuant to Rule 13 of the Revised Rules of the United States Circuit Court of Appeals for the Tenth Circuit, states that the point on which appellant intends to rely on appeal in the above case is as follows:

1. No part of the restricted estate of a deceased allottee of the Five Civilized Tribes of Oklahoma is subject to the estate and inheritance tax laws of the State of Oklahoma.

**Designation of Parts of Record and Proceedings to Be
Printed**

The Clerk will cause to be printed for the consideration of the court in deciding this case the following parts of the record:

1. Complaint and Exhibits of Plaintiff.
2. Answer of Defendant.
3. Stipulation and agreement filed July 15, 1941.
4. Order Admitting Certain Patents and Oil and Gas Lease into Evidence.
- [fol. 2] 5. Findings of Fact and Conclusions of Law.
6. Judgment.

7. Notice of Appeal.
8. Order Extending the Time for Filing the Record on Appeal and Docketing the Action.
9. Statement of Points on which the United States of America Intends to Rely on Appeal.
10. Stipulation Designating Parts of the Record, Proceedings and Evidence to be Included in the Record on Appeal.
11. This Statement of Points on which Appellant Relies and Designation of Parts of the Record to be Printed.

United States of America, By William H. Landram,
Assistant United States Attorney, Attorney for
Appellant.

State of Oklahoma,
County of Muskogee, ss:

Affidavit of Mailing

WILLIAM H. LANDRAM, of lawful age, being first duly sworn upon his oath, deposes and states:

That on the 13th day of May, 1942, he enclosed a copy of the above and foregoing statement of points on which appellant intends to rely on appeal, and designation of parts of the record and proceedings to be printed; in an envelope addressed to A. Francis Porta, Attorney, Oklahoma Tax Commission, State Capitol Building, Oklahoma City, Oklahoma; said envelope was securely sealed and being United States Government mail required no postage; said affiant deposited said envelope in the United States Post Office at Muskogee, Oklahoma, on the date aforesaid.

William H. Landram.

Subscribed and sworn to before me this 13th day of May, 1942. Chas. T. Diffendaffer, Notary Public.
(Seal.) My commission expires 11-7-1945.

[File endorsement omitted]

[fol. 3] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER CONSOLIDATING CAUSES FOR PURPOSES OF PRINTING,
Etc.—May 18, 1942

These causes came on to be heard on the motion of appellant to consolidate the cases in one printed transcript of record for hearing and to consolidate the cases for briefing, and were submitted to the court.

On consideration whereof, it is now here ordered by the court that the said motion be and the same is hereby granted.

[action omitted]

—
[fol. 4] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF OKLAHOMA

Civil Action. No. 432

UNITED STATES OF AMERICA, Plaintiff,

vs.

OKLAHOMA TAX COMMISSION OF THE STATE OF OKLAHOMA,
Defendant

COMPLAINT—Filed Jan. 9, 1941

Comes now the plaintiff, United States of America, by Cleon A. Summers, United States Attorney for the Eastern District of Oklahoma, and William H. Landram, Assistant United States Attorney, by authority of the Attorney General of the United States, and at the request of the Secretary of the Interior, in its own behalf and for and on behalf of the Estate of Lucy, afterwards Lucy Bemore, deceased full-blood Seminole Indian, enrolled as such opposite Roll No. 1563, and for cause of action against the defendant alleges and states:

I

That the defendant, Oklahoma Tax Commission, was created by the laws of the State of Oklahoma and given the power and authority to make assessments and collections, among other things, of estate and inheritance taxes levied and assessed against estates of deceased persons within the State of Oklahoma;

II

That Lucy, afterwards Lucy Bemore, full-blood restricted Indian, enrolled as such opposite Roll No. 1563, departed this life on or about December 23, 1932, while a resident in good faith of the State of Oklahoma; that according to law the real and personal property belonging to the said Lucy, afterwards Lucy Bemore, now deceased, was restricted [fol. 5] from alienation, encumbrance and taxation; that said property was under the control and supervision of the Superintendent for the Five Civilized Tribes, the Secretary of the Interior, and the Plaintiff herein; that the said Lucy, afterwards Lucy Bemore, now deceased, was at all times during her lifetime a ward of the plaintiff herein;

III

That the defendant herein assessed the estate of Lucy, afterwards Lucy Bemore, a deceased restricted member of the Five Civilized Tribes, as estate and inheritance taxes, the sum of Five Thousand Nine Hundred Twenty-five and 20/100 Dollars (\$5,925.20); that the Secretary of the Interior and plaintiff herein on the 10th day of December, 1940, paid to the defendant herein, under protest, the amount of the assessment of said taxes in the sum of Five Thousand Nine Hundred Twenty-five and 20/100 Dollars (\$5,925.20); a photostatic copy of an official receipt of payment of said taxes to said defendant is hereto attached, marked Exhibit "A," incorporated herein and made a part hereof;

IV

Plaintiff further alleges and states that all property belonging to the estate of Lucy, afterwards Lucy Bemore, a deceased restricted member of the Five Civilized Tribes, is restricted and subject to and under the control and supervision of the Secertary of the Interior and the plaintiff by acts of Congress and laws of the United States;

V

Plaintiff further alleges and states that the defendant had no right, authority or power, either at law or in equity, to assess the estate of Lucy, afterwards Lucy Bemore, a deceased restricted member of the Five Civilized Tribes, for inheritance and estate taxes, as same is an assessment

against the plaintiff herein and contrary to law; that the said plaintiff is entitled to recover the amount of the assessment paid to the defendant by the plaintiff herein;

VI

That there was allotted and patented to Lucy, afterwards [fol. 6] Lucy Bemore, as her homestead allotment the non-taxable and restricted lands described as follows:

Lot Six (6) of Section Eighteen (18), Township Five (5) North and Range Eight (8) East, Seminole County, Oklahoma;

A certified photostatic copy of the homestead allotment deed is attached hereto, marked Exhibit "B" and made a part hereof;

VII

That there was allotted and patented to Lucy afterwards Lucy Bemore, as her surplus allotment the non-taxable and restricted land described as follows:

Lot Five (5) of Section Eighteen (18), and the North Sixteen and 26/100 (16.26) acres of Lot One (1) of Section Nineteen (19), Township Five (5) North and Range Eight (8) East, Seminole County, Oklahoma;

A certified photostatic copy of the surplus allotment deed is attached hereto, marked Exhibit "C" and made a part hereof.

VIII

That a certificate designating 68.04 acres of the above described lands as tax exempt was filed for record in the office of the County Clerk of Seminole County, Oklahoma, on May 23, 1930;

A certified photostatic copy of said certificate is attached hereto, marked Exhibit "D" and made a part hereof;

IX

Plaintiff further alleges and states that at the time of making said payment of taxes to the Tax Commission it gave notice to said Tax Commission of its intention to file suit for recovery of said taxes; said notice so given is attached hereto, marked Exhibit "E," incorporated herein and made a part hereof;

Wherefore, Plaintiff demands judgment against the defendant in the sum of Five Thousand Nine Hundred Twenty-five and 20/100 Dollars (\$5,925.20), plus interest at the rate of 3% per annum from the date of payment by [fols. 7-8] said Secretary of the Interior and plaintiff herein until paid; plaintiff further demands that the said defendant be permanently enjoined and restrained from assessing or collecting estate or inheritance taxes from the estate of a deceased member of the Five Civilized Tribes, and more particularly the estate of Lucy, afterwards Lucy Bemore, full-blood restricted Seminole Indian, now deceased, and such temporary and permanent relief as plaintiff may show itself entitled, and for its costs herein expended.

Cleon A. Summers, United States Attorney. William H. Landram, Assistant United States Attorney.

[File endorsement omitted.]

[Vol. 9-10]
OTC Form C-102

EXHIBIT A TO COMPLAINT

State of Oklahoma
Oklahoma Tax Commission
Oklahoma City, Oklahoma

Key Letter Shows Kind of Tax Paid

The report or return hereby acknowledged, as stated below, is accepted subject to final audited tax liability.
The accompanying remittance is subject to final audit and solvent credits. Penalties, as provided by law, will attach the same as if no remittance had been made, when, for any reason checks, drafts or other exchange are returned unpaid.

A—Motor Fuel I—Fuels Excise
B—Corporation License M—Sales Tax
C—Gross Production N—Cigarette
D—Inheritance Tax P—Proration Fund
E—Income Tax Q—Beverage
F—Mileage Tax R—Freight Car Tax
G—Use Tax T—Alcohol Permit
H—Special Fuel Use U—Used Equipment
K—Miscellaneous Tax V—Tokens

Total Tax Payable	Amount of Remittance	Unpaid Balance	Name of Taxpayer	Receipt Number	City or Town	Date	Street, R. F. D. or Box	State	Official Receipt of Report, Or Return and Remittance As Shown
5,225.20		Dec 10 40	Lucy Benore, Dec'd, Full Blood Seminole #1563—USA—Five Tribes Agency Muskogee Okla	1,519	D				G. H. Storms, Cashier.

[fol. 11]

EXHIBIT B TO COMPLAINT**Homestead Allotment Deed No. 1522****MC****Seminole Roll No. 1563****To Seminole Nation,****State of Oklahoma****To all to whom these Presents shall come, Greeting:**

Whereas, By an agreement between the United States and the Seminole Nation, ratified by the Council of the Seminole Nation on December 24, 1897, and by act of Congress approved July 1, 1898 (30 Stat. L., 567), it was provided that all lands belonging to the Seminole Tribe of Indians shall be allotted among the members of said tribe, and

Whereas, It was provided by said act of Congress that "each allottee shall designate one tract of forty acres, which shall by the terms of the deed be made inalienable and non-taxable as a homestead in perpetuity," and

Whereas, It was provided by the act of Congress approved March 3, 1903 (32 Stat. L., 1008), that for the homestead referred to in the aforesaid act of Congress a separate deed shall issue, and

Whereas, The Commissioner to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Lucy as a Homestead allotment, and that the said allottee has been duly enrolled with the approval of the Secretary of the Interior as a full blood citizen of said tribe opposite No. 1563 on the approved roll;

Now, therefore, I, the undersigned, the Principal Chief of the Seminole Nation, by virtue of the power and authority vested in me by law, have granted and conveyed, and by these presents do grant and convey unto the said Lucy all right, title, and interest of the Seminole Nation and of all other members of said Nation, in and to the following described lands, viz: Lot Six (6) of Section Eighteen (18), Township Five (5) North and Range Eight (8) East of the Indian Base and Meridian, in the State of Oklahoma, containing 39.97 acres more or less, according to the United States survey thereof, which shall be inalienable and nontaxable as a homestead in perpetuity, subject, how-

[fol. 12]

ever, to all acts of Congress pertaining to or in any way affecting the Leasing, Incumbrance, or Alienation of said land.

In Witness Whereof, I, the Principal Chief of the Seminole Nation, have hereunto set my hand and caused the great seal of said Nation to be affixed this 27th day of March, A. D. 1913.

John F. Brown, Principal Chief of the Seminole Nation. (Seal.)

Department of the Interior

Approved: May 6—1913.

Franklin K. Lane, Secretary, by G. F. Farrell, Clerk.

Record 15 day of May 1913, at 1 o'clock P. M.

(Seal.)

Department of the Interior

Office of the Superintendent for the Five Civilized Tribes
Muskogee, Oklahoma

This is to certify that I am the officer having custody of the records of deeds of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Nations, and the above and foregoing is a true and correct copy of the deed issued to Lucy as the name appears of record in Book No. 5A page 424 of Seminole Homestead Deed Records.

May 6, 1942.

J. T. Wilkinson, Asst. to Superintendent. (Seal.)

[fol. 13]

EXHIBIT C TO COMPLAINT

Surplus Allotment Deed No. 1522

MC

Seminole Roll No. 1563

The Seminole Nation,
State of Oklahoma

To all to whom these Presents shall come, Greeting:

Whereas, By an agreement between the United States and the Seminole Nation, ratified by the Council of the Seminole Nation on December 24, 1897, and by act of Con-

gress approved July 1, 1898 (30 Stat. L., 567), it was provided that all lands belonging to the Seminole Tribe of Indians shall be allotted among the members of said tribe, and

Whereas, It was provided by the act of Congress approved March 3, 1903 (32 Stat. L., 1008), that for the homestead referred to in the aforesaid act of Congress a separate deed shall issue, and

Whereas, The Commissioner to the Five Civilized Tribes has certified that the land hereinafter described had been selected by or on behalf of Lucy as a Surplus allotment and that the said allottee has been duly enrolled with the approval of the Secretary of the Interior as a full blood citizen of said tribe opposite No. 1563 on the approved roll;

Now, therefore, I, the undersigned, the Principal Chief of the Seminole Nation, by virtue of the power and authority vested in me by law, have granted and conveyed, and by these presents do grant and convey unto the said Lucy all right, title, and interest of the Seminole Nation and of all other members of said Nation, in and to the following-described lands, viz: Lot Five (5) of Section Eighteen (18), and the North Sixteen and 26/100 (16.26) Acres of Lot One (1) of Section Nineteen (19), Township Five (5) [fol. 14] North and Range Eight (8) East of the Indian Base and Meridian, in the State of Oklahoma, containing 28.07 acres, more or less, according to the United States survey thereof, subject to all acts of Congress pertaining to or in any way affecting the Leasing, Incumbrance, or Alienation of said land.

In witness whereof, I, the Principal Chief of the Seminole Nation, have hereunto set my hand and caused the great seal of said nation to be affixed this 27th day of March A. D. 1913.

John F. Brown, Principal Chief of the Seminole Nation. (Seal.)

Department of the Interior

Approved: May 6—1913

Franklin K. Lane, Secretary, by G. F. Farrell, Clerk.

Record 15 day of May 1913, at 1 o'clock P M
(Seal)

Department of the Interior
Office of the
Superintendent for the Five Civilized Tribes
Muskogee, Oklahoma

This is to certify that I am the officer having custody of the records of deeds of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Nations, and the above and foregoing is a true and correct copy of the deed issued to Lucy as the name appears of record in Book No. 5A page 424 of Seminole Surplus Allotment Deed Records.

May 8, 1942.

J. T. Wilkinson, Asst. to Superintendent. (Seal.)

[fol. 15]

EXHIBIT D TO COMPLAINT

Certificate 477

Designating Lands Exempt From Taxation

Five Civilized Tribes

Book 420, on Page 491

† #6173

Muskogee, Okla., October 11th, 1929.

Pursuant to Section 4 of the Act of Congress of May 10, 1928, (Public No. 360 - 70th Congress), the following described restricted Indian lands belonging to Lucy, Konowa, Okla., a full blood citizen of the Seminole Nation, Roll No. 1563, are hereby selected and designated as tax exempt as long as the title thereto remains in the said Lucy, or in any full-blood Indian heir or devisee of said lands; such tax

† Figures in italic in handwriting on photostatic copy.

exemption, in no event, however, to extend beyond April 26, 1956:

Subdivision	Sec.	Twp.	Range	Area	County
Lots 5 & 6	18	5N	8E✓	51.78	Seminole
N 16.26 ac. Lot. 1	19	5N	8E✓	16.26	Seminole
				+68.04	

* LUCY. (The Right
Thumb Mark.)

Witness to Mark:

B. F. Wiley
Glenn Kivett.

Department of the Interior
Washington, D. C.

Approved: May 12, 1930.
Jos. M. Dixon,
First Assistant Secretary.
WAM—

[fol. 16] 6173

Dept. of Int. to Lucy

Indexed

10-11-29

State of Oklahoma, Seminole County, ss.

I hereby certify that this instrument was filed for record in my office the 23 day of May, A. D. 1930, 3 o'clock P. M., and is duly recorded Record 420, Page 491.

Ellis Cooper, County Clerk, by Thelma Sesan.

Filed for record on the 3 day of August, 1931, at 9 o'clock A. M., and recorded in Book 25, Page 477.

A. M. Landman, Supt. for the Five Civilized Tribes,
by Gertrude Hooton, Clerk.

* To be signed by the Indian, or by the Superintendent if the Indian is a minor, incompetent adult, or where the Indian fails to designate.

Department of the Interior
Office of
Superintendent for the Five Civilized Tribes
Muskogee, Oklahoma

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Tax Exemption Certificate No. 477, issued to Lucy, Seminole Roll No. 1563.

May 8, 1942.

J. T. Wilkinson, Asst. to Superintendent.

[fol. 17] EXHIBIT E TO COMPLAINT

I. L. & M. Division
EBS:JBE—12-9-40

Encloses check in payment, under protest, of estate or inheritance taxes—

Estate of Lucy, deceased,
Seminole No. 1563.

December 9, 1940.

Oklahoma Tax Commission, Oklahoma City, Oklahoma.

GENTLEMEN:

I am enclosing herewith check on the Treasurer of the United States in the sum of \$5,925.20, payable to your order, against the restricted account of Lucy, deceased, restricted Seminole Indian No. 1563, and/or her heirs or devisees, in satisfaction of the claim of the State of Oklahoma for estate or inheritance taxes against this estate.

This agency, acting under instructions from the Secretary of the Interior, is making payment of this tax under protest as the Department of the Interior refuses to recognize the right of the State of Oklahoma to assess and collect such a tax against the estate of any deceased restricted Indian or his heirs or devisees.

This will also advise you that the United States Attorney for the Eastern District of Oklahoma, under the instructions by the Attorney General issued upon the request of the Secretary of the Interior, has instituted suit against the Oklahoma Tax Commission to recover the funds paid to you as estate or inheritance taxes in the estate of Nitey, deceased, restricted Seminole Indian No. 1446. Within a few days a suit will also be instituted in the Wosey Deere case.

This will advise you that the United States Attorney for the Eastern District of Oklahoma filed suit against the Oklahoma Tax Commission on December 6, 1940, seeking the recovery of the funds paid as estate or inheritance taxes covering the estate of Nitey, deceased, Seminole No. 1446. The case is styled as follows: United States of America vs. Oklahoma Tax Commission, Civil No. 417.

In view of the pendency of the action to test the rights of the State of Oklahoma to assess and collect an estate or [fol. 18] inheritance tax against the estate of a restricted Indian or his heirs or devisees, notice is hereby given you under Paragraph 4, of Section 27, Chapter 66 of Article 2, or the State Tax Uniform Procedure Act, House Bill No. 243, Session Laws of Oklahoma 1939, that the tax hereby paid is under protest; and that we will be bound by the decision in the Nitey and Wosey John Deere cases; and that should the decision be adverse to the Tax Commission, the tax so paid will be refunded to the Superintendent for the Five Civilized Tribes Agency.

Respectfully, J. T. Wilkinson, Asst. to Superintendent.

Receipt of Government check in full payment of the taxes claimed by the State of Oklahoma against the estate of Lucy, deceased, Seminole No. 1563, is hereby acknowledged. The Oklahoma Tax Commission hereby acknowledges notice of this payment as being under protest, under Paragraph 4 of Section 27 of Chapter 66, Article 2 of the Oklahoma Session Laws of 1939:

Dec. 10, 1940.

Oklahoma Tax Commission, by J. D. Dunn, Vice-Chairman.

IN UNITED STATES DISTRICT COURT

ANSWER AND CERTIFICATE OF SERVICE—Filed March 8, 1941

Comes now the defendant, Oklahoma Tax Commission, and, for its answer to the complaint filed herein, denies each and every material allegation therein contained, except as hereinafter specifically admitted, and demands strict proof thereof.

I

Defendant admits the allegations contained in paragraphs numbered I, VI, VII and IX of the complaint.

II

Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered IV and VIII of the complaint.

[fol. 19]**III**

Defendant admits that Lucy, afterwards Lucy Bemore, was a full-blood Seminole Indian, enroiled as such opposite Seminole Roll No. 1563, and that she departed this life on or about December 23, 1932, while domiciled and a resident in good faith of the State of Oklahoma; defendant alleges that as to the remaining allegations of paragraph numbered II of the complaint, it is without knowledge or information sufficient to form a belief as to the truth thereof.

IV

Defendant alleges that Lucy, afterwards Lucy Bemore, was the owner, at the time of her death, of an estate of the gross value of \$264,212.18; that said estate has been valued by the defendant for inheritance tax purposes at the net value of \$250,630.77, as of the date of the death of Lucy, afterwards Lucy Bemore; that said estate, upon the death of the said Lucy, afterwards Lucy Bemore (December 23, 1932) passed and was transferred to her surviving husband and son in equal shares under and pursuant to the intestate laws (laws of Descent and Distribution) of the State of Oklahoma; that the defendant, pursuant to the Inheritance Tax Law of the State of Oklahoma in force and effect at the time of the death of the said Lucy, afterwards Lucy Bemore, assessed inheritance tax on the transfer of

each of said shares, aggregating the total sum of \$5,925.20; that each of said transfers was subject to the tax assessed; defendant alleges that said tax was paid to it by the Secretary of the Interior on the 10th day of December, 1940, under protest; defendant admits issuance of "Exhibit-A" attached to the complaint; defendant denies that it assessed the estate of Lucy, afterwards Lucy Bemore, an estate and inheritance tax in the amount of \$5,925.20, or in any other amount, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that Lucy, afterwards Lucy Bemore, was, at the time of her death, a restricted member of the Five Civilized Tribes.

V

Defendant denies each and every allegation contained in paragraph numbered V of the complaint; alleges that upon [fol. 20] the death of Lucy, afterwards Lucy Bemore, her said estate passed, as hereinabove stated, to her surviving husband and son in equal shares; that the transfer of each of said shares was under and pursuant to the intestate laws (Laws of Descent and Distribution) of the State of Oklahoma, and subject to the Oklahoma inheritance tax; that said estate was subject to valuation for inheritance tax purposes under the laws of the State of Oklahoma; that the defendant, pursuant to its duty and authority under the laws of said State, determined as aforesaid, the net value of said estate and fixed the same at \$250,630.77, and assessed and collected Oklahoma inheritance tax upon the transfer of the several shares of said estate in the aggregate sum of \$5,925.20.

Wherefore, Defendant, having fully answered the complaint filed herein, demands judgment under which plaintiff shall be denied the relief sought, and under which plaintiff's action shall be dismissed, and for all of its costs in and about this matter laid out and expended.

F. M. Dudley, Attorney for Defendant.

Address: State Capitol Building,
Oklahoma City, Oklahoma.

STATE OF OKLAHOMA,
County of Oklahoma, ss:

F. M. DUDLEY, of lawful age, being first duly sworn, states that he is the attorney for the Oklahoma Tax Commission,

defendant in the above numbered and styled cause; that on February 27, 1941, he served a true and correct copy of the above and foregoing answer on the plaintiff by depositing, on said date, in the United States Post Office, Capitol Station, Oklahoma City, Oklahoma, a copy of said answer, in a sealed envelope addressed to Mr. Wm. H. Landram, Assistant United States Attorney, Federal Building, Muskogee, Oklahoma, attorney for said plaintiff, with postage thereon fully prepaid.

F. M. Dudley.

Subscribed and sworn to before me this 27 day of February, 1941. R. R. Burnham, Notary Public.
(Seal.) My commission expires: Dec. 28, 1941.

[fol. 21] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION AND AGREEMENT—Filed July 15, 1941

Comes now the plaintiff, United States of America, by William H. Landram, Assistant United States Attorney and attorney for the plaintiff, and the defendant, Oklahoma Tax Commission of the State of Oklahoma, by F. M. Dudley, attorney for the defendant, and stipulate and agree as follows:

1

That the defendant, Oklahoma Tax Commission, was created by the laws of the State of Oklahoma and, beside other things, was given the power and charged with the duty of assessing and collecting inheritance tax laid under the laws of the State of Oklahoma.

2

That Lucy, afterwards Lucy Bemore, was a full-blood Seminole Indian, enrolled as such opposite Roll No. 1563, and that she departed this life on or about December 23, 1932, while domiciled in and a resident in good faith of the State of Oklahoma; and that said decedent was at the time of her death, and had been at all times since November 16, 1907, a resident in good faith of and domiciled in the State

of Oklahoma; that the said decedent left surviving her Thomas (Thomas Coon), full-blood Seminole, not enrolled, a son, and Lewis Bemore, $\frac{1}{4}$ blood Creek Indian, her husband.

3

That there was allotted and patented to Lucy, afterwards Lucy Bemore, as her homestead allotment, the following described lands:

Lot 6 of Section 18, Township 5 North, Range 8 East, Seminole County, Oklahoma;

and there was allotted and patented to Lucy, afterwards Lucy Bemore, as her surplus allotment, the following described lands:

[fol. 22] Lot 5 of Section 18, and the North 16.26 Acres of Lot 1 of Section 19, Township 5 North, Range 8 East, containing 28.07 acres;

That Lucy Bemore was the owner of the above described lands at the time of her death.

4

That there was purchased for and in behalf of Lucy Bemore, by the Secretary of the Interior, the following described lands, to-wit:

South 3 acres of the Northwest Quarter of the Southwest Quarter and the Southwest Quarter of the Southwest Quarter of Section 15, Township 5 North, Range 6 East, Pontotoc County, Oklahoma;

title being taken thereto in the name of Lucy Bemore on restricted form of deed; that said decedent was the owner of the lands described in this paragraph at the date of her death.

5

That the lands described in Paragraph 3 were leased during the lifetime of Lucy Bemore for oil and gas mining purposes under departmental oil and gas mining lease or leases approved by the Secretary of the Interior for a period of ten years or as long thereafter as oil and gas is produced in paying quantities. Production was had under said lease or leases from the lands described in Paragraph

3 beginning in 1920 and during the lifetime of said decedent, Lucy Bemore, and the Secretary of the Interior received under the provisions of said lease or leases, from 1920 to date of decedent's death, the royalty payments or income belonging to said decedent on account thereof; that all such royalty payments received by the Secretary of the Interior were deposited by said Secretary, along with all other funds currently received by him on behalf of all restricted Indians, in banks to his own account and said Secretary gave Lucy Bemore credit therefor on the books of the Interior Department.

That at the time of Lucy Bemore's death she had a cash credit on the books of the Interior Department created as aforesaid in the amount of \$205,008.14.

[fol. 23]

6

That Lucy Bemore was the owner at the time of her death of an estate of a gross value of \$264,212.18 consisting of the following:

Lots 5 and 6, Section 18, Township 5 North, Range 8 East; and North Sixteen and 26/100 (16.26) Acres of Lot 1, Section 19, Township 5 North, Range 8 East, Seminole County, Oklahoma	\$10,000.00
South 3 acres of Northwest Quarter of South- west Quarter; and the Southwest Quarter of the Southwest Quarter, Section 15, Township 5 North, Range 6 East, Pontotoc County, Oklahoma, Purchased land	3,000.00
Oil and Gas and Mineral Lease, etc., Lots 5 and 6, Section 18, Township 5 North, Range 8 East; and North Sixteen and 26/100 (16.26) acres of Lot 1, Section 19, Township 5 North, Range 8 East, Seminole County, Oklahoma	\$46,204.04
Cash Credit mentioned under paragraph 5 above	\$205,008.14
	<hr/>
	\$264,212.18

7

That Lucy Bemore died intestate and her said estate aforesaid was transferred and passed to her above mentioned husband and son in equal shares.

That Lucy Bemore's said gross estate of the value of \$264,212.18 was valued by the defendant, Oklahoma Tax Commission, for Oklahoma Inheritance Tax purposes at the net value of \$250,630.77 as of the date of said decedent's death; that said defendant, acting pursuant to the Oklahoma Inheritance Tax law in force at the time of Lucy Bemore's death assessed inheritance taxes in the aggregate of \$5,925.20.

That the Secretary of the Interior on the 10th day of December, 1940, paid to the defendant, Oklahoma Tax Commission, under protest, said sum and received therefor an [fol. 24] official receipt of payment, which receipt is attached to the complaint, marked "Exhibit A," incorporated therein and made a part thereof.

8

That all of the funds above mentioned belonging to the decedent at the time of her death were then retained and supervised by the Secretary of the Interior and since her death one-half of the above mentioned \$205,008.14 cash credit has been retained and supervised by the Secretary of the Interior in behalf of the surviving son of said decedent, the other one-half of said credit having been at the time, or shortly subsequent thereto, of decedent's death released to her surviving husband.

9

That "Exhibit D," attached to and made a part of the complaint, was filed of record in the office of the County Clerk of Seminole County on May 23, 1930, and recorded.

10

That if the transfer of Lucy Bemore's estate and the several shares thereof be subject to the Oklahoma inheritance tax in force and effect at the time of her death it is agreed that the net value of her said estate was \$250,630.77 as of that date and that the inheritance tax of \$5,925.20 assessed on the transfer of the shares thereof was and is the correct amount of tax. Should it be ultimately determined by the court that only a part of the estate of the decedent was subject to the Oklahoma inheritance tax then and in that event the tax will have to be recomputed.

11

That the tax so paid by the Secretary of the Interior to the defendant, Oklahoma Tax Commission, was paid under protest and at the time of making said payment said Secretary gave notice in writing to the defendant of his intention to file suit for the recovery of said tax.

12

That the credits hereinabove mentioned were carried on the books of the Interior Department kept by the Super-[fol. 25] intendent for the Five Civilized Tribes at Muskogee, Oklahoma.

13

Whether or not the lands, or any part thereof, described in this stipulation were restricted at the time of or subsequent to the death of the decedent is a question of law upon which the parties are not agreed; however, it is agreed that the Secretary of the Interior never at any time issued any instrument removing restrictions on said lands or any part thereof.

It is further agreed that either party may introduce in evidence certified copies of the patents under which said lands were originally patented.

It Is Further Stipulated and Agreed by and between the parties hereto that each party reserves the right to introduce further testimony and evidence in support of its pleadings, which is not inconsistent with the facts herein stipulated.

Dated this 15th day of July, 1941.

United States of America, Plaintiff; William H. Landram, Assistant United States Attorney, Attorney for Plaintiff; Oklahoma Tax Commission, Defendant, F. M. Dudley, Attorney for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

**ORDER ADMITTING CERTAIN PATENTS AND OIL AND GAS LEASE
INTO EVIDENCE—Filed October 11, 1941**

Now on this 11th day of October, 1941, the United States of America, plaintiff herein, appeared by William H.

Landram, Assistant United States Attorney for the Eastern District of Oklahoma, and reported to the court that in Part 14 of the Stipulation and Agreement filed herein by the plaintiff and the defendant, it was agreed that either party might introduce into evidence certified copies of the patents under which the lands involved herein were originally patented. The said plaintiff offers the hereinafter named certified copies of patents, certificate designating lands exempt from taxation, and oil and gas mining lease as evidence in this case.

The court finds that in accordance with the stipulation and agreement signed by the plaintiff and defendant, said certified copies of the patents should be admitted into evidence in this case.

It Is Therefore Ordered, Adjudged and Decreed by the court that the following certified copies of patents and certificate designating lands exempt from taxation be admitted into evidence:

Certificate designating lands exempt from taxation—Exhibit "A";

Homestead Deed Patent of Lucy Bemore—Exhibit "B";
Surplus Allotment Deed of Lucy Bemore—Exhibit "C";

It is further ordered, adjudged and decreed that a certified copy of the Oil and Gas Mining Lease, dated the 5th day of January, 1920, signed by Lucy be introduced into evidence and marked Exhibit "D".

Eugene Rice, Judge.

O.K. F. M. Dudley, Attorney for Defendant.

O.K. William H. Landram, Attorney for Defendant.

Exhibit A, B and C are omitted for the reason that they appear at pages 15, 11 and 13 respectively.

[fol. 27]

EXHIBIT D

Oil and Gas Mining Lease Upon Land Selected for Allotment
I27 ind 6673

Seminole Nation, Oklahoma

Royalty No. 61913

This Indenture of Lease, Made and entered into quadruplicate on this 5th day of January A. D. 1920, by and be-

tween Lucy of Vamoosa, Oklahoma, enrolled as a Full blood citizen of the Seminole Nation, Roll No. 1563, party of the first part hereinafter designated as lessor, and M. F. Graham of Okmulgee, Oklahoma, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908, (35 Stat. L. P. 313) Witnesseth:

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations and conditions hereinafter contained, and hereby agreed to be paid, observed and performed by the lessee, does hereby demise, grant, lease and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil or gas is found in paying quantities, all the oil deposits and natural gas in or under the following described tract of land, lying and being within the county of Seminole and State of Oklahoma, to-wit: The Lot 5; Lot 6; of Section 18 and N. 16.26 acres of Lot 1, of Section 19, Township 5 N., Range 8 E. of the Indian Meridian, and containing 68.04 acres, more or less, with the exclusive right to prospect for, extract, pipe, store and remove oil and natural gas, and to occupy and use so much, only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas, also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of [fol. 28] water on said operations, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to pay or cause to be paid to the Superintendent of the Five Civilized Tribes, Muskogee, Oklahoma, for the lessor, as royalty, the sum of 12½ per cent. of the gross proceeds of all crude oil extracted from the said land, such payments to be made at the time of sale or removal of the oil. And the lessee shall pay as royalty on each gas producing well three hundred dollars per annum in advance, to be calculated from the date of commencement of utilization: Provided, however, in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree

upon a royalty, which will become effective as a part of this lease; Provided further, That in case of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in his residence on the leased premises, provided there shall be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well, which cannot profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desires to retain as producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from the date of discovery of gas, on each gas producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made [fol. 29] within twenty-five days from the date of such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.

3. Until a producing well is completed on said premises the lessee shall pay, of cause to be paid, to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for lessor, as advanced annual royalty, from the date of the approval of this lease, fifteen cents per acre per annum, annually, in advance for the first and second years; thirty cents per acre per annum, annually, in advance, for the third and fourth years; seventy-five cents per acre per annum, annually, in advance, for the fifth year; and one dollar per acre per annum, annually, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties, and the lessee hereby agrees that said advance royalty when paid shall not be

refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by this lease and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for the use and benefit of the lessor, for each whole year the completion of such well is delayed after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligations to pay such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would accrue on each well to be offset if said wells had been drilled and

were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirements shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in his occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting tools, derricks, boiler, boiler houses, pipe lines, [fol. 31] pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells which shall remain the property of the lessee, and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; and shall not permit any nuisance to be maintained on the premises under lessee's control nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the same so as effectually to shut off all water from the oil-bearing stratum, or in the manner required by the laws of the State of Oklahoma.

6. The lessee shall keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchases, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all implements, tools, movable machinery, and all other personal chattels used in operating said machinery and also upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty.

7. The lessee may at any time, by paying to the Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma,

all amounts then due as provided herein and the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder; Provided, if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office: Provided, further, in event restrictions are moved from all leased premises, the lessee may surrender all the undeveloped portion thereof by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and [fol. 32] condition of this lease: Provided, however, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, of the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upno the violation of any of the substantial terms and conditions of this lease the Secretary of the Interior (or lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right, at any time after thirty days' notice to the lessee specifying the terms or conditions violated, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or bonds as may be required by said Secretary, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of

the Interior, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restrictions on alienation shall be removed from all the lease hold premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor [fol. 33] or his assigns at the First National Bank of Konawa, Okla., or such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors, and lawful assigns of the parties hereto.

14. In Witness Whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

Lucy (her thumb print mark). (Seal.) M. F. Graham. (Seal.) — — — (Seal.)

Attest: — — —.

Two witnesses to execution by lessor: Louis Fife, P. O. Seminole, Okla.; B. H. McKellop, P. O. Wewoka, Okla.

Two witnesses to execution by lessee: (Signature illegible), P. O. Okmulgee, Okla.; L. W. McLean, P. O. Okmulgee, Okla.

Royalty No. 61913

Received Feb. 19, 1920. No. 856. Supt. Five Civilized Tribes.

STATE OF OKLAHOMA,
County of Seminole, ss:

Before me, Notary Public in and for said county and State, on this — day of January, 1920, personally appeared

[fol. 34] Lucy Roll #1563 to me known to be the identical person— who executed the within and foregoing lease, by her mark, in my presence and in the presence of B. H. McKellop & Louis Fife as witnesses, and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

J. E. Louise, Notary Public.

(My commission expires Aug. 2nd, 1925.)

Department of the Interior, Office of the Superintendent for the Five Civilized Tribes, Muskogee, Okla., Jan. 28, 1920

The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be Approved. See my report of even date.

Joe H. Strain, Acting Superintendent for the Five Civilized Tribes.

Department of the Interior, Office of Indian Affairs, Washington, D. C., Feb. 5, 1920

Respectfully submitted to the Secretary of the Interior, with recommendation that it be Approved.

E. B. Meritt, Assistant Commissioner. (Seal.)

Department of the Interior, Washington, D. C., Feb. 12, 1920

Approved.

William H. Lane, Secretary of the Interior.

Filed in the office of the Superintendent for the Five Civilized Tribes this 13 day of Jany, 1920, at 11 o'clock a. m.

Gabe E. Parker, Superintendent, by A. M. McMillan.

Advance Royalty Received, \$10.35.

[fol. 35] Ent 7-13-20.

Received Jun 24 1920. No. 3501.

5-154r

Lease No. 41483

Department of the Interior, Washington, D. C.

Jun 17 1920.

The assignment of this lease by M. F. Graham to Earle G. Hastings is Approved, effective only from date of

approval, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

S. G. Hopkins, Assistant Secretary.
• 35928 Can

plus	28.07 Acres	
me	39.97 "	
mestead and Surplus		Oct. 27-04
herein was regularly allotted on		Aug. 19-01
Lucy, who is 22 year		
Full blood Seminole Roll No. 1563.		
n. 15th 1920. M.W.C.		

Department of the Interior

Office of Superintendent for the Five Civilized Tribes,
Muskogee, Oklahoma

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and [fol. 36] correct copy of Oil and Gas Mining Lease by and between Lucy and M. F. Graham, dated January 5, 1920.

July 15, 1941.

J. T. Wilkinson, Asst. to Superintendent. (Seal.)

IN UNITED STATES DISTRICT COURT

Findings of Fact and Conclusions of Law—Filed December 23, 1941

This action was instituted by the United States for itself and in behalf of the estate of Lucy Bemore, deceased, full-blood Seminole Indian, to recover the sum of \$5,925.20, with interest, representing the amount assessed by the Oklahoma Tax Commission as an inheritance tax upon the

*—Omitted letters illegible on copy.

transfer of the estate of said Lucy Bemore, who died intestate December 23, 1932. The tax was paid under protest by the Secretary of the Interior and the United States, and this action is to recover same pursuant to the provisions of 68 Okl. Stat. Ann., Sec. 1475.

The cause was tried before the Court and submitted upon written briefs of the parties. The material facts were stipulated.

FINDINGS OF FACT

The facts as stipulated were reduced to writing, signed by the parties and filed herein. The Court finds the facts to be as stipulated. Briefly summarized the essential facts for determination of this cause are as follows:

I

Lucy Bemore is one and the same person as Lucy.

II

Lucy Bemore was a full-blood Seminole Indian, enrolled as such opposite Seminole Roll No. 1563. She died intestate, December 23, 1932, while domiciled in and a resident in good faith of the State of Oklahoma. She left surviving her husband, Lewis Bemore, a one-fourth blood Creek Indian; and her son Thomas, (also known as Thomas Coon), an unenrolled full-blood Seminole Indian, who inherited her estate in equal shares.

[fol. 37]

III

Lucy Bemore died seized of the following estate:

Real Property.

Her homestead allotment consisting of 39.97 acres.

Her surplus allotment consisting of 28.07 acres.

Forty-three acres of land purchased for her out of restricted funds, title to which was taken on a restricted form of deed. (The date of this purchase and the date specified for expiration of the restrictions do not appear in the stipulation.)

Personal Property.

U. S. Treasury Bonds purchased for her account out of proceeds from the sale of oil and gas produced from her allotted lands,

Cash credit on the books of the Interior Department representing proceeds from the sale of said oil and gas (both the bonds and the cash were in the custody of and in the control of the Secretary of the Interior at the time of the death of Lucy Bemore.)

The gross value of said estate was \$264,212.18, and was valued by the Oklahoma Tax Commission for inheritance tax purposes at the net value of \$250,630.77.

IV

A certificate designating Lucy Bemore's homestead and surplus allotments as tax-exempt was filed for record in the office of the County Clerk of Seminole County Oklahoma, on May 23, 1930.

V

The Secretary of the Interior, never at any time issued any instrument removing restrictions on said lands or any part thereof; and all of the funds, belong to decedent at the time of her death, were then and have been at all times since then, retained under the supervision and control of the Secretary of the Interior and the credits therefor were carried upon the books of said Department, kept by the Superintendent for the Five Civilized Tribes at Muskogee, [fol. 38] Oklahoma, except that one-half of the funds, which passed to decedent's husband were released to him shortly after her death.

VI

The defendant Oklahoma Tax Commission, acting pursuant to the Oklahoma Inheritance Tax Law in force at the time of Lucy's death, assessed an inheritance tax upon the transfer of said estate in the sum of \$5,925.20, which is agreed to be the correct amount of tax if said transfer is taxable in its entirety.

VII

On December 16, 1940, the Secretary of the Interior paid said tax to the defendant, under written protest; and at such time the Secretary gave notice in writing to the defendant of his intention to file suit for the recovery of said tax.

CONCLUSIONS OF LAW

I

This is a suit of a civil nature, brought by the United States of which this court has original jurisdiction. 28 U. S. C. A. Sec. 41 (1).

II

All of the real property with the possible exception of the forty-three acres of purchased lands after April, 1931, was restricted during Lucy's life. Her homestead and surplus allotments were tax-exempt. The income derived from her allotted lands and the personal property in the custody and control of the Secretary of the Interior was restricted.

With the possible exception above noted, all the property, real and personal, was restricted in the hands of the full-blood heir, and his interest in the tax-exempt lands was likewise tax-exempt. Both the real and personal property inherited by the quarter-blood heir became unrestricted and taxable. Secs. 1 and 8, Act of January 27, 1933 (47 Stat. 777); Sec. 9, Act of May 27, 1908 (35 Stat. 315) as amended by Sec. 1, Act of April 12, 1926 (44 Stat. [fol. 39] 239); Sec. 2, Act of May 10, 1928 (45 Stat. 495); Glenn v. Lewis, 105 F. (2d) 398.

III

The applicable Oklahoma Law provides as follows:

"A tax is hereby laid upon the transfer to persons * * * of property * * *.

When the transfer is of tangible property in this State made by any person, or of intangible property made by a resident of this State at the time of transfer:

First: By will or the intestate laws of this State; * * *. Chap. 162, S. L. Okla., 1915, as amended by Chap. 112, S. L. Okl., 1927, and found in Secs. 12469 et seq., Okl. Stat. 1931.

IV

An inheritance tax or transfer tax such as is provided by the Oklahoma law is not levied on the property of which

the estate is composed. It is an excise tax upon the shifting of economic benefits, on the privilege of transferring property at death, on the transitus of the property from the dead to the living, *United States Trust Co. v. Helvering*, 307 U. S. 57; *United States v. Perkins*, 163 U. S. 625, *McGannon v. State*, 33 Okl. 145, 124 P. 1063, *Knowlton v. Moore*, 178 U. S. 41, *Landman v. Commissioner of Internal Revenue* (C. C. A. 10th) 123 F. (2d) —, decided November 11, 1941, and cases cited therein.

V

This case is primarily concerned with the question of whether or not a transfer or inheritance tax may be levied by the State of Oklahoma upon the transfer of the estate of a full-blood Indian which estate consisted principally of restricted property, restricted in the hands of the decedent and both restricted and unrestricted in the hands of the heirs. A tax upon the transfer of property is valid even though the property is restricted and tax-exempt. *Plummer v. Cole*, 178 U. S. 116; *Orr v. Gilman*, 183 U. S. 278; *United States Trust Co. v. Helvering*, *supra*. The transfer of the restricted estate of a full-blood restricted member of one [fol. 40] of the Five Civilized Tribes is subject to the Federal Estate Tax. Such an estate is not deemed exempt from a transfer tax on the ground that it is a Federal instrumentality. It is not deemed a Federal instrumentality. *Landman v. Commissioner of Internal Revenue*, *supra*, and cases cited therein.

VI

The estate herein passed under the intestate laws of the State of Oklahoma. Members of the Five Civilized Tribes are citizens of the State of Oklahoma, *Bolen v. Nebraska*, 176 U. S. 831, *Hickman v. United States*, 224 U. S. 413. As to the members of the Five Civilized Tribes it has been the policy of Congress to subject the estates of members of said tribes to the control of the local laws of succession. Sec. 23 of the Act of April 26, 1906 (34 Stat. 137) as amended; Sec. 9 of the Act of May 27, 1908 (35 Stat. 312) as amended; *Blundell v. Wallace*, 267 U. S. 373, *Jackson v. Harris* (C. C. A. 10th) 43 F. (2d) 513; *Jefferson v. Fink*, 247 U. S. 288; *Dunn v. Micco* (C. C. A. 10th) 106 F. (2d) 356.

VII

Congress has the power to control the devolution of the estates of members of the Five Civilized Tribes. The State of Oklahoma concedes that Congress has this power, but contends that Congress has seen fit, by its various acts, to make applicable the laws of the State of Oklahoma to the devolution of the estates of the members of the Five Civilized Tribes. The construction of these acts of Congress and a consideration of whether or not the laws of Congress or the laws of the State of Oklahoma control the devolution of the estates of members of the Five Civilized Tribes is a Federal question and the decisions of the Federal courts are controlling. The Federal decisions, both of the Circuit Court, and the Supreme Court in Blundell v. Wallace, *supra*, seem to settle this question in favor of defendant's contention. *Childers v. Beaver*, 270 U. S. 555 and *Blanset v. Cardin*, 256 U. S. 319, relied upon by the Government involved the estate of a Quapaw Indian and a construction of the Act of June 25, 1910 (36 Stat. 855) applicable to the Quapaw Indians. This act of Congress, Sec. 33 provides: "That the provisions of this Act shall not apply to the [fol. 41] Osage Indians, nor to the Five Civilized Tribes, in Oklahoma, * * *."

VIII

The estate in question passed under the intestate laws of the State of Oklahoma and the transfer of said estate is subject to the tax provided in Article 5, Chap. 66, S. L. of Oklahoma, 1935. The Government can not recover the tax that has been paid to the State of Oklahoma. Judgment is for the defendant.

The attorney for the defendant will prepare proper decree to be submitted to attorneys for plaintiff and to the Court for approval and entry of judgment on the thirtieth day of December, 1941.

Dated this twenty third day of December, 1941.

Eugene Rice, District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

JUDGMENT—December 30, 1941

Now on this 30th day of December, 1941, there came on for entry of judgment the above numbered and entitled cause, pursuant to regular assignment and as directed by the court; the plaintiff United States of America, appeared by Cleon A. Summers, United States Attorney, and William H. Landram, Assistant United States Attorney for the Eastern District of Oklahoma, and the defendant appeared by F. M. Dudley, Attorney for the Oklahoma Tax Commission of the State of Oklahoma, and no other appearances were made. The court finds that heretofore the parties have entered into a written stipulation of facts and filed the same in said cause and that no other testimony was introduced. The court further finds that both parties waived trial by jury and filed in said cause briefs and submitted said case on said briefs and stipualtion of facts to the court; the court, after having considered the facts and briefs of both plaintiff and defendant, filed in said cause on the 23rd day of December, 1941, Findings of Fact and Conclusions of Law.

[fol. 42] It Is Therefore Ordered, Adjudged and Decreed by the Court that according to the Findings of Fact and Conclusions of Law filed herein, the defendant, Oklahoma Tax Commission of the State of Oklahoma, have judgment in its favor and judgment is therefore rendered for the defendant, Oklahoma Tax Commission of the State of Oklahoma, and it is adjudged that the defendant go hence without day; defendant to pay costs.

Dated this 30th day of December, 1941.

Eugene Rice, District Judge.

OK: as to form.

Cleon A. Summers, William H. Landram, Attorneys
for Plaintiff. F. M. Dudley, Attorney for De-
fendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed March 28, 1942

Notice is hereby given that the United States of America, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Tenth Circuit from the final judgment entered in this action on December 30, 1941.

United States of America, by William H. Landram,
Assistant United States Attorney, Attorney for
Appellant, Federal Building, Muskogee, Muskogee,
Oklahoma.

Notice of the Filing of Notice of Appeal

To F. M. Dudley, Attorney for Oklahoma Tax Commission,
State Capitol Building, Oklahoma City, Oklahoma:

Please take notice that the United States of America filed [fol. 43] in the above styled case on the 28th day of March, 1942, a notice of appeal to the United States Circuit Court of Appeals for the Tenth Circuit.

Dated this 28th day of March, 1942.

John H. Pugh, Clerk, U. S. District Court for the Eastern District of Oklahoma, by Broaddus Martin, Deputy.

STATE OF OKLAHOMA,
County of Muskogee, ss:

The undersigned, of lawful age, being first duly sworn upon his oath, deposes and states:

That on the 28th day of March, 1942, he enclosed a copy of the above and foregoing notice of appeal and notice of the filing of the notice of appeal in an envelope addressed to F. M. Dudley, Attorney, Oklahoma Tax Commission, State Capitol Building, Oklahoma City, Oklahoma, and after securely sealing said envelope affiant states that he deposited it in the United States Post Office at Muskogee, Oklahoma, on the date aforesaid, and being United States Government mail required no postage.

John H. Pugh, Clerk, U. S. District Court for the Eastern District of Oklahoma, by Broaddus Martin, Deputy.

Subscribed and sworn to before me this 28th day of March, 1942. Eugene Wheeler, Notary Public.
(Seal.) My commission expires 9-4-44.

I acknowledge receipt of a copy of the Notice of Appeal from William H. Landram, Assistant United States Attorney for the Eastern District of Oklahoma, attorney for the plaintiff herein.

F. M. Dudley, Attorney for the Defendant, Oklahoma Tax Commission.

[File endorsement omitted.]

[fol. 44] [Appellant's statement of points relied on, filed in the district court, is identical with the statement which appears at page 1.]

IN UNITED STATES DISTRICT COURT

STIPULATION DESIGNATING PARTS OF THE RECORD, PROCEEDINGS
AND EVIDENCE TO BE INCLUDED IN THE RECORD ON APPEAL—
Filed May 5, 1942

It is stipulated and agreed by and between the plaintiff, United States of America, by William H. Landram, Assistant United States Attorney for the Eastern District of Oklahoma, and the defendant, Oklahoma Tax Commission, by A. Francis Porta, attorney for said defendant, that the record on appeal in the above numbered and entitled cause shall include the following:

1. Complaint and Exhibits of Plaintiff.
2. Answer of Defendant.
3. Stipulation and Agreement filed herein on July 15, 1941.
4. Order Admitting Certain Patents and Oil and Gas Lease into Evidence.
5. Findings of Fact and Conclusions of Law.
6. Judgment.
7. Statement of Points on which Plaintiff Intends to Rely on Appeal.
8. Stipulation Designating Parts of the Record, Proceedings and Evidence to be included in the Record on Appeal.

9. Order Extending the Time for Filing the Record on Appeal and Docketing the Action.

10. Notice of Appeal.

[fols. 45-48] Said Stipulation and Agreement is entered into by authority of Rule 75(f) Rules of Civil Procedure for the District Courts of the United States.

United States of America, Plaintiff, by William H. Landram, Assistant United States Attorney, Attorney for Plaintiff; Oklahoma Tax Commission, Defendant, by A. Francis Porta, Attorney for Defendant.

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING THE TIME FOR FILING THE RECORD ON APPEAL AND DOCKETING THE ACTION—Filed May 2, 1942

Now on this 2nd day of May, 1942, for good cause shown, it is ordered that the time for filing the record on appeal and docketing the action is extended for a period of thirty (30) days from the date hereof.

Eugene Rice, Judge.

[File endorsement omitted.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 49] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 2559

UNITED STATES OF AMERICA, Appellant,

vs.

OKLAHOMA TAX COMMISSION OF THE STATE OF OKLAHOMA,
Appellee

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO
RELY ON APPEAL, AND DESIGNATION OF PARTS OF THE REC-
ORD TO BE PRINTED—Filed May 15, 1942

Comes now the above named appellant, United States of America, by William H. Landram, Assistant United States Attorney for the Eastern District of Oklahoma, and pur-

suant to Rule 13 of the Revised Rules of the United States Circuit Court of Appeals for the Tenth Circuit, states that the point on which appellant intends to rely on appeal in the above case is as follows:

1. No part of the restricted estate of a deceased allottee of the Five Civilized Tribes of Oklahoma is subject to the estate and inheritance tax laws of the State of Oklahoma.

Designation of Parts of Record and Proceedings To Be Printed

The Clerk will cause to be printed for the consideration of the court in deciding this case the following parts of the record:

1. Complaint and Exhibits of Plaintiff.
2. Answer of Defendant.
3. Stipulation and agreements filed July 15, 1941.
4. Order Directing Exhibits Attached to Stipulation and Agreement be Admitted into Evidence.
5. Order Admitting Certain Patents and Oil and Gas Lease into Evidence.
- [fol. 50] 6. Findings of Fact and Conclusions of Law.
7. Judgment.
8. Notice of Appeal.
9. Order Extending the Time for Filing the Record on Appeal and Docketing the Action.
10. Statement of Points on which the United States of America Intends to Rely on Appeal.
11. Stipulation Designating Parts of the Record, Proceedings and Evidence to be Included in the Record on Appeal.
12. This Statement of Points on which Appellant Relies and Designation of Parts of the Record to be Printed.

United States of America, by William H. Landram,
Assistant United States Attorney, Attorney for
Appellant.

STATE OF OKLAHOMA,

County of Muskogee, ss:

Affidavit of Mailing

William H. Landram, of lawful age, being first duly sworn upon his oath, deposes and states:

That on the 13th day of May, 1942, he enclosed a copy of the above and foregoing statement of points on which appellant intends to rely on appeal, and designation of parts of the record and proceedings to be printed, in an envelope addressed to A. Francis Porta, Attorney, Oklahoma Tax Commission, State Capitol Building, Oklahoma City, Oklahoma; said envelope was securely sealed, and being United States Government mail required no postage; said affiant deposited said envelope in the United States Post Office at Muskogee, Oklahoma, on the date aforesaid.

William H. Landram.

Subscribed and sworn to before me this 13th day of May, 1942. Chas. T. Diffendaffer, Notary Public.
My commission expires 10-17-1945. (Seal.)

[File endorsement omitted.]

[fol. 51] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF OKLAHOMA

Civil Action No. 417

UNITED STATES OF AMERICA, Plaintiff,

vs.

OKLAHOMA TAX COMMISSION OF THE STATE OF OKLAHOMA,
Defendant

COMPLAINT—Filed December 6, 1940

Comes now the plaintiff, United States of America, by Cleon A. Summers, United States Attorney for the Eastern District of Oklahoma, and William H. Landram, Assistant United States Attorney, by authority of the Attorney General of the United States, and at the request of the Secre-

tary of the Interior, in its own behalf and for and on behalf of the Estate of Nitey, deceased full-blood Seminole Indian, enrolled as such opposite Roll No. 1446, and for cause of action against the defendant alleges and states.

I

That the defendant, Oklahoma Tax Commission, was created by the laws of the State of Oklahoma and given the power and authority to make assessments and collections, among other things, of estate and inheritance taxes levied and assessed against estates of deceased persons within the State of Oklahoma;

II

That Nitey, full-blood restricted Indian, enrolled as such opposite Roll No. 1446, departed this life on or about August 17, 1930, while a resident in good faith of the State of Oklahoma; that according to law the real and personal property belonging to the said Nitey, now deceased, was [fol. 52] restricted from alienation, encumbrance and taxation; that said property was under the control and supervision of the Superintendent for the Five Civilized Tribes, the Secretary of the Interior, and the plaintiff herein; that the said Nitey, now deceased, was at all times during her lifetime a ward of the plaintiff herein;

III

That the defendant herein assessed the estate of Nitey, a deceased restricted member of the Five Civilized Tribes, as estate and inheritance taxes, the sum of Sixteen Thousand Fifty-three and 74/100 Dollars (\$16,053.74); that the Secretary of the Interior and plaintiff herein on the 3rd day of December, 1940, paid to the defendant herein, under protest, the amount of the assessment of said taxes in the sum of Sixteen Thousand Fifty-three and 74/100 Dollars (\$16,053.74); a duplicate copy of an official receipt of payment of said taxes to said defendant is hereto attached, marked Exhibit "A", incorporated herein and made a part hereof.

IV

Plaintiff further alleges and states that all property belonging to the estate of Nitey, a deceased restricted mem-

ber of the Five Civilized Tribes, is restricted and subject to and under the control and supervision of the Secretary of the Interior and the plaintiff by Acts of Congress and laws of the United States;

V

Plaintiff further alleges and states that the defendant had no right, authority or power, either at law or in equity, to assess the estate of Nitey a deceased restricted member of the Five Civilized Tribes, for inheritance and estate taxes, as same is an assessment against the plaintiff herein and contrary to law; that the said plaintiff is entitled to recover the amount of the assessment paid to the defendant by the plaintiff herein.

VI

That there was allotted and patented to Nitey as her [fol. 53] homestead allotment the non-taxable and restricted lands described as follows:

Lot One (1), (or the NE $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section Two (2), Township Seven (7) North, Range Six (6) East, Seminole County, Oklahoma;

A certified photostatic copy of the homestead allotment deed is attached hereto, marked Exhibit "B" and made a part hereof.

VII

That there was allotted and patented to Nitey as her surplus allotment the non-taxable and restricted land described as follows:

East Half of the Southeast Quarter of Section Thirty-five, Township Eight (8) North, Range Six (6) East, and the South Half of the Northeast Quarter and Lot Two (2), (or NW $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section Two (2), Township Seven (7) North, Range Six (6) East, Seminole County, Oklahoma;

A certified photostatic copy of the surplus allotment deed is attached hereto, marked Exhibit "C" and made a part hereof.

VIII

That a certificate designating 160 acres of the above described lands as tax exempt was filed for record in the

office of the County Clerk of Seminole County, Oklahoma, on December 3, 1930; a certified photostatic copy of said certificate is attached hereto, marked Exhibit "D" and made a part hereof.

IX

Plaintiff further alleges and states that at the time of making said payment of taxes to the Tax Commission it gave notice to said Tax Commission of its intention to file suit for recovery of said taxes; said notice so given is attached hereto, marked Exhibit "E", incorporated herein and made a part hereof.

Wherefore, plaintiff demands judgment against the defendant in the sum of Sixteen Thousand Fifty-three and 74/100 Dollars (\$16,053.74), plus interest at the rate of 3% per annum from the date of payment by said Secretary of the Interior and plaintiff herein until paid; plaintiff further demands that the said defendant be permanently enjoined and restrained from assessing or collecting estate or inheritance taxes from the estate of a deceased member of the Five Civilized Tribes, and more particularly the estate of Nitey, full-blood restricted Seminole Indian, now deceased, and such temporary and permanent relief as plaintiff may show itself entitled, and for its costs herein expended.

Cleon A. Summers, United States Attorney, William H. Landram, Assistant United States Attorney.

[File endorsement omitted]

[fol. 55-56]
OTC Form C-102

Exhibit A to COMPLAINT

State of Oklahoma
Oklahoma Tax Commission
Oklahoma City, Oklahoma

The report or return hereby acknowledged,
as stated below, is accepted subject to final
audited tax liability.
The accompanying remittance is subject to
final audit and solvent credits. Penalties, as
provided by law, will attach the same as if no
remittance had been made, when, for any reason
checks, drafts or other exchange are returned
unpaid.

Total Tax
Payable Amount of
Remittance
Unpaid
Balance
Date

16,053.74 Dec 2 40

Official Receipt of
Report, Or Return and
Remittance As Shown

Key Letter Shows Kind of Tax Paid

A—Motor Fuel	L—Fuel Excise
B—Corporation License	M—Sales Tax
C—Gross Production	N—Cigarette
D—Inheritance Tax	P—Proration Fund
E—Income Tax	Q—Beverage
F—Mileage Tax	R—Freight Car Tax
G—Use Tax	T—Alcohol Permit
H—Special Fuel Use	U—Used Equipment
K—Miscellaneous Tax	V—Tokens

Receipt Number	City or Town Street, R. F. D. or Box	City or Town Nitey, Dec'd Full Blood Seminole # 1446 U S of America Through the Five Tribe Agency Muskogee Okla
1,490		D

G. H. STORMS, Cashier.

[fol. 57]

EXHIBIT B TO COMPLAINT

Homestead Allotment Deed No. 1414 MC.

Seminole Roll 1446

The Seminole Nation,
State of Oklahoma:

To All to Whom these Presents Shall Come, Greeting:

Whereas, by an agreement between the United States and the Seminole Nation, ratified by the Council of the Seminole Nation on December 24, 1897, and by act of Congress approved July 1, 1898 (30 Stat. L., 567), it was provided that all lands belonging to the Seminole tribe of Indians shall be allotted among the members of said tribe, and

Whereas, It was provided by said act of Congress that "each allottee shall designate one tract of forty acres, which shall by the terms of the deed be made inalienable and non-taxable as a homestead in perpetuity," and

Whereas, It was provided by the act of Congress approved March 3, 1903 (32 Stat. L., 1008), that for the homestead referred to in the aforesaid act of Congress a separate deed shall issue, and

Whereas, The Commissioner to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Nitey as a Homestead allotment, and that the said allottee has been duly enrolled with the approval of the Secretary of the Interior as a full-blood citizen of said tribe opposite No. 1446 on the approved roll;

Now, therefore, I, the undersigned, the Principal Chief of the Seminole Nation, by virtue of the power and authority vested in me by law, have granted and conveyed, and by these presents do grant and convey unto the said Nitey all right, title, and interest of the Seminole Nation and of all other members of said Nation, in and to the following-described lands, viz:

Lot One (1) of Section Two (2), Township Seven (7) North and Range Six (6) East of the Indian Base and Meridian, in the State of Oklahoma, containing Forty (40) [fol. 58] acres more or less, according to the United States survey thereof, which shall be inalienable and nontaxable

as a homestead in perpetuity, subject, however, to all acts of Congress pertaining to or in any way affecting the Leasing, Incumbrance, or Alienation of said land.

In Witness Whereof, I, the Principal Chief of the Seminole Nation, have hereunto set my hand and caused the great seal of said Nation to be affixed this 27th day of March, A. D. 1913.

John F. Brown, Principal Chief of the Seminole Nation. (Seal.)

Department of the Interior

Approved: May 6, 1913.

Franklin K. Lane, Secretary. By G. F. Farrell, Clerk.
Record on the 15th day of May, 1913, at 1 o'clock P. M.

Department of the Interior

Office of Superintendent for the Five Civilized Tribes,

Muskogee, Oklahoma

This is to certify that I am the officer having custody of the records of deeds of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Nations, and the above and foregoing is a true and correct copy of the deed issued to Nitey, Seminole 1446, full blood, as the name appears of record in Book No. 5-A, page 354, of Seminole Homestead Deed Records.

J. T. Wilkinson, Asst. to Superintendent. (Seal).
January 3, 1941.

[fol. 59]

EXHIBIT C TO COMPLAINT

Surplus Allotment Deed No. 1414 MC
Seminole Roll No. 1446

THE SEMINOLE NATION,
State of Oklahoma:

To all to whom these presents shall come, Greeting:

Whereas, By an agreement between the United States and the Seminole Nation, ratified by the Council of the Seminole Nation on December 24, 1897, and by act of Con-

gress approved July 1, 1898 (30 Stat. L., 567), it was provided that all lands belonging to the Seminole Tribe of Indians shall be allotted among the members of said tribe, and

Whereas, It was provided by the act of Congress approved March 3, 1903 (32 Stat. L., 1008), that for the homestead referred to in the aforesaid act of Congress a separate deed shall issue, and

Whereas, The Commissioner to the Five Civilized Tribes has certified that the land hereinafter described had been selected by or on behalf of Nitey as a Surplus allotment and that the said allottee has been duly enrolled with the approval of the Secretary of the Interior as a full-blood citizen of said tribe opposite No. 1446 on the approved roll;

Now, therefore, I, the undersigned, the Principal Chief of the Seminole Nation, by virtue of the power and authority vested in me by law, have granted and conveyed, and by these presents do grant and convey, unto the said Nitey all right, title, and interest of the Seminole Nation and of all other members of said nation in and to the following described lands, viz: Lot Two (2) and the South Half of the North East Quarter of Section Two (2), Township Seven (7) North and Range Six (6) East, and the East Half of the South East Quarter of Section Thirty-Five (35), Township Eight (8) North and Range Six (6) East of the Indian [fol. 60] Base and Meridian, in the State of Oklahoma, containing 200.16 acres, more or less, according to the United States survey thereof, subject to all acts of Congress pertaining to or in any way affecting the Leasing, Incumbrance, or Alienation of said land.

In witness whereof, I the Principal Chief of the Seminole Nation, have hereunto set my hand and caused the great seal of said nation to be affixed this 27th day of March, A. D. 1913.

John F. Brown, Principal Chief of the Seminole Nation. (Seal.)

Department of the Interior

Approved May 6, 1913.

Franklin K. Lane, Secretary, By G. F. Farrell, Clerk.

Record- on the 15 day of May, 1913, at 1 o'clock P. M.

Department of the Interior.

Office of Superintendent for the Five Civilized Tribes,
Muskogee, Oklahoma

This is to certify that I am the officer having custody of the records of deeds of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Nations, and the above and foregoing is a true and correct copy of the deed issued to Nitey, Seminole 1446, full blood as the name appears of record in Book No. 5-A, page 354, of Seminole Allotment Deed Records.

J. T. Wilkinson, Asst. to Superintendent. (Seal.)
January 3, 1941.

[fol. 61]

EXHIBIT D TO COMPLAINT

Certificate 541

On Designating Lands Exempt From Taxation

Five Civilized Tribes.

Book 441, Page 49

12627

Wewoka, Okla., June 23, 1930.

Pursuant to Section 4 of the Act of Congress of May 10, 1928 (Public No. 360—70th Congress), the following described restricted Indian lands belonging to Nitey, an Incompetent, Wewoka, Oklahoma, a full-blood citizen of the Seminole Nation, Roll No. 1446, are hereby selected and designated as tax exempt as long as the title thereto remains in the said Nitey, an Incompetent, or in any full-blood Indian heir or devisee of said lands, such tax exemp-

tion, in no event, however, to extend beyond April 26, 1956.

Subdivision	Sec.	Twp.	Range	Area	County
Lot 1	2	7N	6E✓	40	Seminole✓
S 40 ac. of Lot 2	2	7N	6E✓	40	Seminole✓
S 2 NE	2	7N	6E✓	80	Seminole✓

* A. G. McMillan, Acting Superintendent for the Five Civilized Tribes.

Department of the Interior, Washington, D. C.

Nov. 4, 1930.

Approved:

Jos. M. Dixon, First Assistant Secretary.
WWM.

[fol.62] 12627

Indexed

Dept. of Int. to Nitey

11-4-30

STATE OF OKLAHOMA,
Seminole County, ss:

I hereby certify that this instrument was filed for record in my office the 2 day of Dec. A. D. 1930 at 1 o'clock P. M. and is duly recorded in Record 441, page 49.

Ellis Cooper, County Clerk, By Thelma Seran.

Filed for record on the 7 day of August, 1931, at 9 o'clock A. M., and recorded in Book 26, page —.

A. M. Landman, Supt. for the Five Civilized Tribes,
By Gertrude Hooton, Clerk.

* To be signed by the Indian, or by the Superintendent if the Indian is a minor, incompetent adult, or where the Indian fails to designate.

Department of the Interior,
Office of Superintendent for the Five Civilized Tribes,
Muskogee, Oklahoma

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Certificate designating lands exempt from taxation of Nitey, Seminole Fullblood Roll No. 1446.

Jan. 3, 1941.

J. T. Wilkinson, Asst. to Superintendent. (Seal.)

[fol. 63]

EXHIBIT E TO COMPLAINT

STATE OF OKLAHOMA,
County of Muskogee, ss:

Notice of Intention to File Suit for Recovery of Taxes
To the Oklahoma Tax Commission, State of Oklahoma:

Take notice that the United States of America, acting on behalf of the Secretary of the Interior, and the estate of Nitey, deceased full-blood Seminole Indian, intends to file suit for recovery of estate and inheritance taxes paid on this date by the United States of America and the Secretary of the Interior in the sum of \$16,053.74, being the sum assessed by you as estate and inheritance taxes against said estate.

Cleon A. Summers, United States Attorney; William H. Landram, Assistant United States Attorney.

I acknowledge receipt of a copy of the above notice of intention of the United States of America to file suit for recovery of the estate and inheritance taxes on this Dec. 3—1940 day of December, 1940.

Oklahoma Tax Commission, by J. D. Dunn, Vice-Chairman.

IN UNITED STATES DISTRICT COURT

ANSWER AND AFFIDAVIT OF SERVICE—Filed February 28, 1941

Comes now the defendant, Oklahoma Tax Commission, and, for its answer to the complaint filed herein, denies each and every material allegation therein contained, except as hereinafter specifically admitted, and demands strict proof thereof.

I

Defendant admits the allegations contained in paragraphs numbered I, VI, VII and IX of the complaint.

II

Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered IV and VIII of the complaint.

III

Defendant admits that Nitey was a full-blood Seminole Indian, enrolled as such opposite Seminole Roll No. 1446, and that she departed this life on or about August 17, 1930, while domiciled in and a resident in good faith of the State of Oklahoma; defendant alleges that as to the remaining allegations of paragraph numbered II of the complaint it is without knowledge or information sufficient to form a belief as to the truth thereof.

IV

Defendant alleges that Nitey was the owner, at the time of her death, of an estate of the gross value of \$752,751.97; that said estate has been valued by the defendant for inheritance tax purposes at the net value of \$677,593.58, as of the date of Nitey's death; that said estate upon Nitey's death (August 17, 1930) passed and was transferred to her surviving husband and five children in equal shares by a will executed and probated under and pursuant to the laws of the State of Oklahoma, or according to the intestate laws (Laws of Descent and Distribution) of the State of Oklahoma; that the defendant, pursuant to the Inheritance Tax Law of the State of Oklahoma in force and effect at the time of Nitey's death, assessed inheritance tax on the transfer of

each of said shares aggregating the total sum of \$16,053.74; that each of said transfers was subject to the tax assessed; defendant alleges that said tax was paid to it by the Secretary of the Interior on the 3rd day of December, 1940, under protest; defendant admits issuance of "Exhibit A" attached to the complaint; defendant denies that it assessed the estate of Nitey an estate and inheritance tax in the amount of \$16,053.74, or in any other amount; defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that Nitey was, at the time of her death, a restricted member of the Five Civilized Tribes.

[fol. 65]

V

Defendant denies each and every allegation contained in paragraph numbered V of the complaint; alleges that upon the death of Nitey her said estate passed, as hereinabove stated, to her surviving husband and five children in equal shares; that the transfer of each of said shares was pursuant to a will executed and probated under the laws of the State of Oklahoma, or according to the intestate laws (Laws of Descent and Distribution) of said State, subject to the Oklahoma Inheritance Tax; that said estate was subject to valuation for inheritance tax purposes under the laws of the State of Oklahoma; that the defendant, pursuant to its duty and authority under the laws of said State, determined as aforesaid the net value of said estate and fixed the same at \$677,593.58, and assessed and collected Oklahoma Inheritance Tax upon the transfer of the several shares of said estate in the aggregate sum of \$16,053.74.

Wherefore, Defendant, having fully answered the complaint filed herein, demands judgment under which plaintiff shall be denied the relief sought and under which plaintiff's action shall be dismissed, and for all of its costs in and about this matter laid out and expended.

F. M. Dudley, Attorney for Defendant. Address:
State Capitol Building, Oklahoma City, Oklahoma.

STATE OF OKLAHOMA,

County of Oklahoma, ss:

F. M. Dudley, of lawful age, being first duly sworn, states that he is the attorney for the Oklahoma Tax Commission, defendant in the above numbered and styled cause; that on

February 27, 1941, he served a true and correct copy of the above and foregoing answer on the plaintiff by depositing, on said date in the United States Post Office, Capitol Station, Oklahoma City, Oklahoma, a copy of said answer, in a sealed envelope addressed to Mr. Wm. H. Landram, Assistant United States Attorney, Federal Building, [fol. 66] Muskogee, Oklahoma, attorney for said plaintiff, with postage thereon fully prepaid.

F. M. Dudley.

Subscribed and sworn to before me this 27 day of February, 1941. R. R. Burnham, Notary Public.
My commission expires: December 28, 1941.
(Seal.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION AND AGREEMENT—Filed July 14, 1941

Come now the plaintiff, United States of America, by Wm. H. Landram, Assistant United States Attorney and attorney for the plaintiff, and the defendant, Oklahoma Tax Commission of the State of Oklahoma, by F. M. Dudley, attorney for the defendant, and stipulate and agree as follows:

1

That the defendant, Oklahoma Tax Commission, was created by the laws of the State of Oklahoma, and, besides other things, was given the power and charged with the duty of assessing and collecting inheritance and inheritance and transfer taxes laid under the laws of the State of Oklahoma.

2

That Nitey was a Seminole Indian of the full blood and was enrolled as such opposite Seminole Roll No. 1446, and that she departed this life on or about August 7, 1930, while domiciled in and a resident in good faith in the State of Oklahoma; and that said decedent was at the time of her death, and had been at all times since November 16, 1907, a

citizen of the State of Oklahoma; and that said decedent left surviving her five children, all full-blood Seminole Indians.

3

That there was allotted and patented to Nitey, as her homestead allotment the following described lands:

Lot One (1), (or the NE $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section 2, Township 7 North, Range 6 East, Seminole County, Oklahoma; [fol. 67] and that there was allotted and patented to Nitey, as her surplus allotment, the following lands:

The East Half of the Southeast Quarter of Section 35, Township 8 North, Range 6 East, and the South Half of the Northeast Quarter and Lot 2 (or NW $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section 2, Township 7 North, Range 6 East, Seminole County, Oklahoma;

That Nitey was the owner of the above described lands at the time of her death.

4

That the lands above described were leased during the lifetime of Nitey for oil and gas mining purposes under departmental oil and gas mining leases, approved by the Secretary of the Interior, for a period of ten years or as long thereafter as oil and gas is produced in paying quantities. Production was had under said leases from said lands in large quantities during the lifetime of said decedent, and the Secretary of the Interior received, under the provisions of said lease or leases, the royalty payments or income belonging to said decedent on account thereof; that out of such royalty payments so received by the Secretary of the Interior said Secretary purchased for Nitey United States Treasury Bonds, and at the time of decedent's death there were credited to her account, on the books of the Interior Department, United States Treasury Bonds of a total face value of \$203,812.50, and the fair market value of these bonds, with accrued interest thereon at the date of decedent's death, was \$204,693.75; that all such royalty payments received by the Secretary of the Interior in excess of the amount or amounts invested by him, as aforesaid in United States Treasury Bonds, were deposited by said Secretary, along with all other funds currently received by him on behalf of all restricted Indians, in banks to his own

account, and said Secretary gave Nitey credit therefor on the books of the Interior Department.

That at the time of Nitey's death there was credited to her account on the books of the Interior Department United States Treasury Bonds, so purchased as aforesaid by the [fol. 68] Secretary of the Interior, of the face value of \$203,812.50, with interest accrued thereon in the amount of \$881.25, and at the time of said decedent's death she had a cash credit on the books of the Interior Department, created as aforesaid, in the amount of \$513,380.22.

5

That Nitey was the owner at the time of her death of an estate of the gross value of \$752,751.97, consisting of the following:

U. S. Treasury Bonds credited to her account, under paragraph 4 above,	\$203,812.50
Interest Accrued on said Bonds	881.25
Cash Credit, mentioned under paragraph 4 above	513,380.22
E½ of SE¼ of Section 35, Twp. 8 North, Range 6 East, Seminole County, Oklahoma	32,078.00
Household goods	2,500.00
Truck	100.00
 Total	 \$752,751.97

6

That Nitey died testate, having executed on June 1, 1930, at her home in Seminole County, Oklahoma, a Will which was valid and duly probated in Probate Case No. 3703 in the County Court of Seminole County, Oklahoma; that Nitey's estate was transferred and passed under said Will to her five surviving children in equal shares.

That Nitey's said gross estate of the value of \$752,751.97 was valued by the defendant, Oklahoma Tax Commission, for Oklahoma inheritance tax purposes, at the net value of \$677,593.58; and that said defendant, acting pursuant to the Oklahoma Inheritance Tax Law in force at the time of Nitey's death, assessed inheritance tax on the transfer of the share of said estate passing to each of decedent's children, such tax amounting in the aggregate to \$16,053.74.

That the Secretary of the Interior, on the 3rd day of [fol. 69] December, 1940, paid to the defendant, Oklahoma Tax Commission, under protest, said sum and received therefor an official receipt of payment, which receipt is attached to the complaint, marked "Exhibit A", incorporated therein and made a part thereof.

7

That all of the funds, including the United States Treasury Bonds above mentioned, belonging to the decedent at the time of her death, were then and have been at all times since then, retained and supervised by the Secretary of the Interior.

8

That "Exhibit D", attached to and made a part of the complaint, was filed of record in the office of the County Clerk of Seminole County, Oklahoma, on December 3, 1930, in Book 441, Page 49, of the records of said County.

That if the transfer of Nitey's estate be subject to the Oklahoma inheritance tax in force and effect at the time of her death, it is agreed that the next value of said estate was \$677,593.58, as of that date; and that the inheritance tax of \$16,053.74 assessed on the transfers of said estate was and is the correct amount of tax.

10

That the tax so paid by the Secretary of the Interior to the defendant, Oklahoma Tax Commission, was paid under protest and at the time of making said payment the Secretary of the Interior gave notice in writing to the defendant of his intention to file suit for the recovery of said tax.

11

That the credits hereinabove mentioned were carried on the books of the Interior Department, kept by the Superintendent of the Five Civilized Tribes at Muskogee, Oklahoma.

12

Whether or not the lands, or any part thereof, described in this stipulation were restricted at the time of or subsequent to the death of decedent is a question of law upon which the parties are not agreed; however, it is agreed

that the Secretary of the Interior never at any time issued any instrument removing restrictions on said lands or any part thereof. It is further agreed that either party may introduce in evidence certified copies of the patents under which said lands were originally patented.

It Is Further Stipulated and Agreed by and between the parties hereto that each party reserves the right to introduce further testimony and evidence in support of its pleadings, which is not inconsistent with the facts herein stipulated.

Dated this 14th day of July, 1941.

United States of America, Plaintiff, William H. Landram, Assistant United States Attorney, Attorney for Plaintiff. Oklahoma Tax Commission, Defendant. F. M. Dudley, Attorney for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL STIPULATION AND AGREEMENT—Filed July
21, 1941

In addition to and supplementing the stipulation and agreement filed in the above styled case on July 14, 1941, it is stipulated and agreed that the following exhibits as numbered may be introduced by plaintiff as evidence in said case:

Exhibit No. 1—Homestead Patent of Nitey.

Exhibit No. 2—Surplus allotment patent of Nitey.

Exhibit No. 3—Oil and Gas Mining Lease upon the homestead allotment of the said Nitey.

Exhibit No. 4—Oil and Gas Mining Lease upon the surplus allotment of Nitey.

[fol. 71] That certified photostatic copies are hereto attached and numbered exhibits as aforesaid.

United States of America, Plaintiff, by William H. Landram, Assistant United States Attorney, Attorney for Plaintiff. Oklahoma Tax Commission, by F. M. Dudley, Attorney for Defendant.

The aforesaid exhibits attached hereto are admitted into evidence on the 21st day of July, 1941.

Eugene Rice, Judge.

[File endorsement omitted.]

Clerk's Note: Exhibits No. 1 and No. 2 are omitted for the reason same appear at page 57 and page 59 respectively.

IN UNITED STATES DISTRICT COURT

ORDER ADMITTING CERTAIN PATENTS AND OIL AND GAS LEASE
INTO EVIDENCE—Filed October 11, 1941

Now on this 11th day of October, 1941, the United States of America, plaintiff herein, appeared by William H. Landram, Assistant United States Attorney for the Eastern District of Oklahoma, and reported to the court that in Part 14 of the Stipulation and Agreement filed herein by the plaintiff and the defendant, it was agreed that either party might introduce into evidence certified copies of the patents under which the lands involved herein were originally patented. The said plaintiff offers the hereinafter named certified copies of patents, certificate designating lands exempt from taxation, and oil and gas mining lease as evidence in this case.

The court finds that in accordance with the stipulation and agreement signed by the plaintiff and defendant, said certified copies of the patents should be admitted into evidence in this case.

It Is Therefore Ordered, Adjudged and Decreed by the court that the following certified copies of patents and certificate designating lands exempt from taxation be admitted into evidence:

[fol. 72] Certificate designating lands exempt from taxation—Exhibit "A":

Homestead deed Patent of Nitey;—Exhibit "B".

Surplus Allotment Deed of Nitey—Exhibit "C".

It is further ordered, adjudged and decreed that a certified copy of the Oil and Gas Mining Lease, dated the 28th day of January, 1922, signed by Nitey be introduced into evidence and marked Exhibit "D".

Eugene Rice, Judge.

O. K. F. M. Dudley, Attorney for Defendant.

O. K. William H. Landram, Attorney for Plaintiff.

[File endorsement omitted.]

(Exhibits A, B and C are omitted for the reason that same appear at page 61; page 57 and page 59 respectively.)

EXHIBIT D

Oil and Gas Mining Lease Upon Land Selected for Allotment

I 27 ind 7259 Seminole Nation, Oklahoma

This Indenture of Lease, Made and entered into in quadruplicate on this 28th day of January A. D. 1922, by and between Nitey, of Seminole, Okl., enrolled as a full blood citizen of the Seminole Nation, Roll No. 1446, party of the first part, hereinafter designated as lessor, and Guy E. [fol. 73] Buchner, of Holdenville, Oklahoma, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908, (34 Stat. L. P. 312) Witnesseth:

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations and conditions hereinafter contained, and hereby agreed to be paid, observed and performed by the lessee, does hereby demise, grant, lease, and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil or gas is found in paying quantities, all the oil deposits and natural gas in or under the following described tract of land, lying and being within the county of Seminole and State of Oklahoma, to-wit: The Northeast (NE4) Quarter of of Section 2, Township 7 N, Range 6E of the Indian Meridian, and containing 160 acres, more or less, with the exclusive right to prospect for, extract, pipe, store and remove oil and natural gas, and to occupy and use so much, only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas, also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

Royalty No. 62684

2. The lessee hereby agrees to pay or cause to be paid to the Superintendent of the Five Civilized Tribes, Muskogee, Oklahoma, for the lessor, as royalty, the sum of 12½ per cent of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or removal of the oil. And the lessee shall pay as royalty on each gas producing well three hundred dollars per annum in advance, to be calculated from the date of [fol. 74] commencement of utilization: Provided, however, in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree upon a royalty, which will become effective as a part of this lease; Provided, further, That in case of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in his residence on the leased premises, provided there shall be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well, which cannot profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desires to retain gas producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from date of discovery of gas, on each gas producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty-five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.

3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for lessor, as advanced annual royalty, from the date of the approval of this lease, fifteen cents per acre per annum, annually, in advance for the first and second years; thirty cents per acre per annum, annually, in advance, for the third and fourth years; seventy-five cents per acre per annum, annually, in advance, for the fifth year; and one dollar per acre per annum, annually, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties, and the lessee hereby agrees that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by this lease and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for the use and benefit of the lessor, for each whole year the completion of such well is delayed after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a

violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligations to pay [fol. 76] such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would accrue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirements shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in his occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted; shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting tools, derricks, boiler, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells which shall remain the property of the lessee, and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; and shall not permit any nuisance to be maintained on the premises under lessee's control nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the

same so as effectually to shut off all water from the oil-bearing stratum, or in the manner required by the laws of the State of Oklahoma.

[fol. 77] 6. The lessee shall keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchases, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all implements, tools, movable machinery, and all other personal chattels used in operating said property and also upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty.

7. The lessee may at any time, by paying to the Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, all amounts then due as provided herein and the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder; Provided, if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office: Provided, further, in event restrictions are removed from all leased premises, the lessee may surrender all the undeveloped portion thereof by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: Provided, however, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of any of the substantial terms and conditions of this lease the Secretary of the Interior (or lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right at any time after thirty days' notice to the lessee specifying the terms or conditions violated, to declare this lease null and void, and

[fol. 78] the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior and such further bond or bonds as may be required by said Secretary, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restrictions on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, shall thereafter be made to lessor of the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the First National Bank of Seminole, Okla., or such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors, and lawful assigns of the parties hereto.

14. In Witness Whereof, the said parties have hereunto [fol. 79] subscribed their names and affixed their seals on the day and year first above mentioned.

Nitey, (Seal) her (thumb print) mark, Guy M. Buchner, (Seal) — — —, (Seal).

Attest: — — —.

Two witnesses to execution by lessor:

P. J. Narcomey, P. O. Holdenville, Okla.

H. A. Archerd, Field Clerk, P. O. Holdenville, Okla.

Two witnesses to execution by lessee:

Ralph S. Welch, P. O. Holdenville, Oklahoma.

Arthur Bruner, P. O. Holdenville, Oklahoma.

STATE OF OKLAHOMA,

County of Hughes, ss:

Before me, a Notary Public, in and for said county and state, on this 28th day of January, 1922, personally appeared Nitey, to me known to be the identical person—who executed the within and foregoing lease, by her mark, in my presence and in the presence of H. A. Archerd and P. J. Narcomey, as witnesses, and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

James W. Rodgers, Notary Public.

(My commission expires April 16, 1925.)

Department of the Interior, Office of the Superintendent for the Five Civilized Tribes, Muskogee, Okla., Mar. 21, 1922.

The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be Approved. See my report of even date.

[fol. 80] Clark Wasson, Acting Superintendent for the Five Civilized Tribes.

Department of the Interior, Office of Indian Affairs, Washington, D. C., (illegible) 1922.

Respectfully submitted to the Secretary of the Interior, with recommendation that it be Approved.

E. B. Meritt, Assistant Commissioner.

Royalty 62684

Department of the Interior, Washington, D. C., Mar. 31, 1922. Approved.

F. M. Goodwin, Assistant Secretary of the Interior.

Filed in the office of the Superintendant for the Five Civilized Tribes this 25 day of February, 1922, at 9:45 o'clock a. m.

Victor M. Looke, Jr., Superintendent, by J. C. Mad-
den.

Advance Royalty Received, \$24.00.

Bonus 80.00.

Ent. 6/1/23
5-154r

Lease No. 45164
May 4-1923.

Department of the Interior, Washington, D. C.

The assignment of this lease by Guy M. Buchner, of all his interest in so far as it covers the N/2 of NE/4; SW/4 of NE/4 Sec. 2, T. 7 N., R. 6 East, to Indian Territory Illuminating Oil Company, is Approved, effective only from date of approval, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

Hubert Work, Secretary.

Department of the Interior

Office of Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Oil and Gas Mining Lease by and between Nitey and Guy M. Buchner dated January 28, 1922.

J. F. Wilkinson, Ass't to Superintendent (Seal.)

Jul. 15, 1941.

OIL AND GAS MINING LEASE UPON LAND SELECTED FOR ALLOT-
MENT

Seminole Nation, Oklahoma

This Indenture of Lease, made and entered into in quadruplicate on this 28th day of January, A. D. 1922, by and between Nitey, of Seminole, Okla., enrolled as a full-blood citizen of the Seminole Nation, Roll No. 1446, party of the [fol. 82] first part, hereinafter designated as lessor, and Gladys Belle Oil Company, of Tulsa, Oklahoma, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908, (35 Stat. L. P. 312) Witnesseth:

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations and conditions hereinafter contained, and hereby agreed to be paid, observed and performed by the lessee, does hereby demise, grant, lease, and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil or gas is found in paying quantities, all the oil deposits and natural gas in or under the following described tract of land, lying and being within the county of Seminole, and State of Oklahoma, to-wit: The East Half (E2) of Southeast (SE4) Quarter, 6% of Section 35, Township 8N, Range 6E of the Indian Meridian, and containing 80 acres, more or less, with the exclusive right to prospect for, extract, pipe, store and remove oil and natural gas, and to occupy and use so much, only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing and removing such oil and natural gas, also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to pay or cause to be paid to the Superintendent of the Five Civilized Tribes, Muskogee, Oklahoma, for the lessor, as royalty, the sum of 12½ per cent. of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale

or removal of the oil. And the lessee shall pay as royalty on each gas producing well three hundred dollars per annum in advance, to be calculated from the date of commencement of utilization: Provided, however, in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject to [fol. 83] the approval of the Secretary of the Interior, agree upon a royalty, which will become effective as a part of this lease; Provided, Further, That in case of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in his residence on the leased premises, provided there shall be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well, which cannot profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desires to retain gas producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from date of discovery of gas, on each gas producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty-five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.

3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for lessor, as advanced annual royalty, from the date of the approval of this lease, fifteen cents per acre per annum, annually, in advance for the first and second years; thirty cents per acre per annum, annually, in advance, for the third and fourth years; seventy-five cents per acre per

annum annually, in advance, for the fifth year; and one dollar per acre per annum, annually, in advance, for each [fol. 84] succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties, and the lessee hereby agrees that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by this lease and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, for the use and benefit of the lessor, for each whole year the completion of such well is delayed after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligations to pay such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, [fol. 85] or by such officer as may be designated by him for

the purpose to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would accrue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirements shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in his occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to lessor or to whosoever shall be lawfully entitled thereto, unavoidable casualties excepted; shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting tools, derricks, boiler, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells which shall remain the property of the lessee, and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; and shall not permit any nuisance to be maintained on the premises under lessee's control nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the same so as effectually to shut off all water from the oil-bearing stratum, or in the manner required by the laws of the State of Oklahoma.

6. The lessee shall keep an accurate account of all oil-[fol. 86] mining operations, showing the sales, prices, dates, purchases, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all implements,

tools, movable machinery, and all other personal chattels used in operating said property and also upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty.

7. The lessee may at any time, by paying to the Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, all amounts then due as provided herein and the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder: Provided, if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office: Provided, Further, in event restrictions are removed from all leased premises, the lessee may surrender all the undeveloped portion thereof by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: Provided, However, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, of the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of any of the substantial terms and conditions of this lease the Secretary of the Interior (or lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right at any time after thirty days' notice to the lessee specifying the terms or conditions violated, to declare this lease null and void, and the [fol. 87] lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or bonds as may be required by said Secretary, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restrictions on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to said Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma, shall thereafter be made to lessor of the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the First National Bank of Seminole, Okla., or such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors, and lawful assigns of the parties hereto.

14. In Witness Whereof, the said parties have hereunto [fol. 88] subscribed their names and affixed their seals on the day and year first above mentioned.

Nity, (Seal.) (Imprint of Thumb.) ✓ Gladys Belle
Oil Company, (Seal), by G. C. Stebbins, President.

Attest: C. B. Coon, Secretary.

Attest: — — .

Two witnesses to execution by lessor: P. J. Narcomey,
P. O. Holdenville, Okla. H. A. Archerd, Field Clerk, P. O.
Holdenville, Okla.

Two witnesses to execution by lessee: Rene Gilbert, P. O.
Tulsa, Oklahoma. F. A. Peek, P. O. Tulsa, Oklahoma.

STATE OF OKLAHOMA,
County of Hughes, ss:

— before me, a Notary Public, in and for said county and state, on this 28th day of January, 1922, personally appeared Nitey, to me known to be the identical person—who executed the within and foregoing lease, by her mark, in my presence and in the presence of H. A. Archerd, and P. J. Narcomey, as witnesses, and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

James W. Rogers, Notary Public. (My commission expires April 16, 1925.)

Department of the Interior

Office of the Superintendent for the Five Civilized Tribes
Muskogee, Okla., Mar. 8, 1922.

The within lease is forwarded to the Commissioner of In-[fol. 89] dian Affairs with recommendation that it be Approved. See my report of even date.

Clark Wasson, Superintendent.

Department of the Interior,

Office of Indian Affairs,

Washington, D. C., Mar. 16, 1922.

Respectfully submitted to the Secretary of the Interior, with recommendation that it be Approved.

E. B. Meritt, Assistant Commissioner.

Department of the Interior

Washington, D. C., Mar. 18, 1922.

Approved. F. M. Goodwin, Assistant Secretary of the Interior.

Filed in the office of the Superintendent for the Five Civilized Tribes this 1 day of February, 1922, at 1 o'clock P. M.

Victor M. Locke, Jr., Superintendent, by J. C. Madden.

Advance Royalty Received, \$12.00
Bonus 40.00

Duplicate**Surplus**

40588 can
27042 can

Land described herein was regularly allotted as — to Nitey, who is 39 years, a F Full-blood Seminole, Roll No. 1446.

M. W. (illegible).

Date Feb. 3-22.

Department of the Interior
Office of
Superintendent for the Five Civilized Tribes
Muskogee, Oklahoma

This is to certify that I am the officer having custody of [fol. 90] the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Oil and Gas Mining lease dated January 28, 1922 by and between Nitey and Gladys Belle Oil Company.

J. T. Wilkinson, Asst. to Superintendent. (Seal.)

May 6, 1942.

IN UNITED STATES DISTRICT COURT

Findings of Fact and Conclusions of Law—Filed December 22, 1941

This action was instituted by the United States for itself and in behalf of the estate of Nitey, deceased full-blood Seminole Indian, to recover the sum of \$16,053.74, with interest, representing the amount assessed by the Oklahoma Tax Commission as an inheritance tax upon the transfer of the estate of said Nitey, who died testate August 17, 1930. The tax was paid under protest by the Secretary of the Interior and the United States, and this action is to recover same pursuant to the provisions of §8 Okl. Stat. Ann., Sec. 1475.

The cause was tried before the court and submitted upon written briefs of the parties. The material facts were stipulated.

FINDINGS OF FACT

The facts as stipulated were reduced to writing, signed by the parties and filed herein. The court finds the facts to be as stipulated. Briefly summarized the essential facts for determination of this cause are as follows:

I

Nitey was a full-blood Seminole Indian, enrolled as such opposite Seminole Roll No. 1446. She died August 17, 1930, while domiciled in and a resident in good faith of the State of Oklahoma. Nitey left a will which was duly probated and under which her estate was transferred to her five surviving full-blood Seminole children in equal shares.

[fol. 91]

II

Nitey died seized of the following estate:

Real Property:

Her homestead allotment consisting of 40 acres,
Her surplus allotment consisting of 200 acres,

Personal Property:

U. S. Treasury Bonds purchased for her account out of proceeds from the sale of oil and gas produced from her allotted lands,

Cash credit on the books of the Interior Department representing proceeds from the sale of said oil and gas (both the bonds and the cash were in the custody of and in the control of the Secretary of the Interior at the time of the death of Nitey.)

Household goods and a truck valued in the aggregate at \$2,600.00.

The gross value of said estate was \$752,751.97, which was valued by the Oklahoma Tax Commission for Oklahoma inheritance tax purposes at the net value of \$677,593.58.

III

A certificate designating 160 acres of Nitey's lands (being her homestead and 120 acres of her surplus allotment) as

tax-exempt was filed for record in the office of the County Clerk of Seminole County, Oklahoma, on December 3, 1930.

IV

The Secretary of the Interior, never at any time issued any instrument removing restrictions on said lands or any part thereof; and all of the funds, including the United States Treasury bonds, belonging to decedent at the time of her death, were then and have been at all times since then, retained under the supervision and control of the Secretary of the Interior and the credits therefor were carried upon the books of said department, kept by the Superintendent for the Five Civilized Tribes at Muskogee, Oklahoma.

[fol. 92]

V

The Defendant Oklahoma Tax Commission, acting pursuant to the Oklahoma Inheritance Tax Law in force at the time of Nitey's death, assessed an inheritance tax upon the transfer of said estate in the sum of \$16,053.74, which is the correct amount of tax if said transfer is taxable in its entirety.

VI

On December 3, 1940, the Secretary of the Interior paid said tax to the defendant, under written protest; and at such time the Secretary gave notice in writing to the defendant of his intention to file suit for the recovery of said tax.

CONCLUSIONS OF LAW

I

This is a suit of a civil nature, brought by the United States, of which this court has original jurisdiction. 28 U. S. C. A. Sec. 41 (1).

II

All of the real property was restricted during Nitey's life and is restricted in the hands of her devisees. One hundred sixty acres of her land was tax-exempt, and is tax-exempt in the hands of her devisees. The income from her allotted lands and the personal property in the custody and

control of the Secretary of the Interior was restricted during Nitey's life, and is restricted in the hands of her legatees. Secs. 1 and 8, Act of January 27, 1933 (47 Stat. 777); Sec. 9, Act of May 27, 1908 (35 Stat. 315) as amended by Sec. 1, Act of April 12, 1926 (44 Stat. 239); Sec. 2, Act of May 10, 1928 (45 Stat. 495); *Glenn v. Lewis*, 105 F. (2d) 398.

III

The applicable Oklahoma Law provides as follows:

"A tax is hereby laid upon the transfer to persons * * * of property * * *."

When the transfer is of tangible property in this State [fol. 93] made by any person, or of intangible property made by a resident of this State at the time of transfer:

First: By will or the intestate laws of this State; * * *".

Chap. 162, S. L. Okl., 1915, as amended by Chap. 112, S. L. Okl., 1927, and found in Secs. 12469 et seq., Okl. Stat. 1931.

IV

An inheritance tax or transfer tax such as is provided by the Oklahoma Law is not levied on the property of which the estate is composed. It is an excise tax upon the shifting of economic benefits, on the privilege of transferring property at death, on the transitus of the property from the dead to the living, *United States Trust Co. v. Helvering*, 307 U. S. 57; *United States v. Perkins*, 163 U. S. 625, *McGannon v. State*, 33 Okl. 145, 124 P. 1063; *Knowlton v. Moore*, 178 U. S. 41; *Landman v. Commissioner of Internal Revenue*, (C. C. A. 10th) 123 F. (2d) —, decided November 11, 1941, and cases cited therein.

V

This case is primarily concerned with the question of whether or not a transfer or inheritance tax may be levied by the State of Oklahoma upon the estate of a full-blood Indian which estate consisted principally of restricted property, restricted in the hands of the decedent and in the hands of the heirs. A tax upon the transfer of property is valid even though the property is restricted and tax-exempt. *Plumber v. Coler*, 178 U. S. 115; *Orr v. Gilman*, 183 U. S.

278; *United States Trust Co. v. Helvering*, *supra*. The transfer of the restricted estate of a full-blood restricted member of one of the Five Civilized Tribes is subject to the Federal Estate Tax. Such an estate is not deemed exempt from a transfer tax upon the ground that it is a Federal instrumentality. It is not deemed a Federal instrumentality. *Landman v. Commissioner of Internal Revenue*, *supra*, and cases cited therein.

VI

The estate herein passes under the laws of the State of Oklahoma. Members of the Five Civilized Tribes are citizens [fol. 94] of the State of Oklahoma, *Bolen v. Nebraska*, 176 U. S. 831; *Hickman v. United States*, 224 U. S. 413. As to the members of the Five Civilized Tribes it has been the policy of Congress to subject the estates of members of said tribes to the control of the local laws of wills and succession. Sec. 23, of the Act of April 26, 1906 (34 Stat. 137), as amended; Sec. 9, Act of May 27, 1908 (35 Stat. 312), as amended; *Blundell v. Wallace*, 267 U. S. 373, *Jackson v. Harris* (C. C. A. 10th), 43 F. (2d) 513; *Jefferson v. Fink*, 247 U. S. 288; *Dunn v. Micco* (C. C. A. 10th), 106 F. (2d) 356.

VII

Congress has the power to control the devolution of the estates of members of the Five Civilized Tribes. The State of Oklahoma concedes that Congress has this power, but contends that Congress has seen fit, by its various acts, to make applicable the laws of the State of Oklahoma to the devolution of the estates of the members of the Five Civilized Tribes. The construction of these acts of Congress and a consideration of whether or not the laws of Congress or the laws of the State of Oklahoma control the devolution of the estates of members of the Five Civilized Tribes is a Federal question and the decisions of the Federal Courts are controlling. The Federal decisions, both of the Circuit Court, and the Supreme Court in *Blundell v. Wallace*, *supra*, seem to settle this question in favor of defendant's contention. *Childers v. Beaver*, 270 U. S. 555, and *Blanset v. Cardin*, 256 U. S. 319, relied upon by the Government, involved the estate of a Quapaw Indian and a construction of the Act of June 25, 1910 (36 Stat. 855), applicable to the Quapaw Indians. This act of Congress,

Sec. 33 provides: "That the provisions of this Act shall not apply to the Osage Indians, nor to the Five Civilized Tribes, in Oklahoma, * * *."

VIII

The estate in question passed under the laws of the State of Oklahoma, and the transfer of said estate is subject to the tax provided in Chap. 162, S. L. Okl., 1915, as amended by Chap. 112, S. L. Okl., 1927, and found in Secs. 12469 et seq., Okl. Stat. 1931. The Government cannot recover the tax [fol. 95] that has been paid to the State of Oklahoma. Judgment is for the Defendant.

The attorney for the defendant will prepare proper decree to be submitted to attorneys for plaintiff and to the Court for approval and entry of judgment on the thirtieth day of December, 1941.

Dated this 22 day of December, 1941.

Eugene Rice, District Judge.

[File endorsement omitted.]

UNITED STATES DISTRICT COURT

JUDGMENT—December 30, 1941

Now on this 30th day of December, 1941, there came on for entry of judgment the above numbered and entitled cause, pursuant to regular assignment and as directed by the Court; the plaintiff United States of America, appeared by Cleon A. Summers, United States Attorney, and William H. Landram, Assistant United States Attorney for the Eastern District of Oklahoma, and the defendant appeared by F. M. Dudley, Attorney for the Oklahoma Tax Commission of the State of Oklahoma, and no other appearances were made. The Court finds that heretofore the parties have entered into a written stipulation of facts and filed the same in said cause and that no other testimony was introduced.

The Court further finds that both parties waived trial by jury and filed in said cause briefs and submitted said case on said briefs and stipulation of facts to the Court; the Court, after having considered the facts and briefs of both

plaintiff and defendant, filed in said cause on the 22nd day of December, 1941, Findings of Fact and Conclusions of Law.

It Is Therefore Ordered, Adjudged and Decreed by the Court that according to the Findings of Fact and Conclusions of Law filed herein, the defendant, Oklahoma Tax Commission of the State of Oklahoma, have judgment in its favor and judgment is therefore rendered for the defendant, Oklahoma Tax Commission of the State of Oklahoma, and [fol. 96] it is adjudged that the defendant go hence without day; defendant to pay costs.

Dated this 30th day of December, 1941.

Eugene Rice, District Judge.

OK as to Form:

Cleon A. Summers, William H. Landram, Attorneys for Plaintiff. F. M. Dudley, Attorney for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed March 28, 1942

Notice is hereby given that the United States of America, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Tenth Circuit from the final judgment entered in this action on December 30, 1941.

United States of America, By: William H. Landram, Assistant United States Attorney, Attorney for Appellant, Federal Building, Muskogee, Oklahoma.

Notice of the Filing of Notice of Appeal

To F. M. Dudley, Attorney for Oklahoma Tax Commission, State Capitol Building, Oklahoma City, Oklahoma:

Please take notice that the United States of America filed in the above styled case on the 28th day of March, 1942, a notice of appeal to the United States Circuit Court of Appeals for the Tenth Circuit.

Dated this 28th day of March, 1942.

John H. Pugh, Clerk U. S. District Court for the Eastern District of Oklahoma, By: Broaddus Martin, Deputy.

[fol. 97] STATE OF OKLAHOMA,
County of Muskogee, ss:

The undersigned, of lawful age, being first duly sworn upon his oath, deposes and states:

That on the 28th day of March, 1942, he enclosed a copy of the above and foregoing notice of appeal and notice of the filing of the notice of appeal in an envelope addressed to F. M. Dudley, Attorney, Oklahoma Tax Commission, State Capitol Building, Oklahoma City, Oklahoma, and after securely sealing said envelope affiant states that he deposited it in the United States Post Office at Muskogee, Oklahoma, on the date aforesaid, and being United States Government mail required no postage.

John H. Pugh, Clerk, U. S. District Court for the Eastern District of Oklahoma, By Broaddus Martin, Deputy.

Subscribed and sworn to before me this 28th day of March, 1942. Eugene Wheeler, Notary Public.
My commission expires: 9-4-44. (Seal.)

I acknowledge receipt of a copy of the Notice of Appeal from William H. Landram, Assistant United States Attorney for the Eastern District of Oklahoma, attorney for the plaintiff herein.

F. M. Dudley, Attorney for Defendant, Oklahoma Tax Commission.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION DESIGNATING PARTS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE INCLUDED IN THE RECORD ON APPEAL—Filed May 5, 1942

It is stipulated and agreed by and between the plaintiff, United States of America, by William H. Landram, Assistant United States Attorney for the Eastern Dis-
[fol. 98] trict of Oklahoma, and the defendant, Oklahoma Tax Commission, by A. Francis Porta, attorney for said

defendant, that the record on appeal in the above numbered and entitled cause shall include the following:

1. Complaint and exhibits of plaintiff.
2. Answer of Defendant.
3. Stipulation and agreement filed herein on July 15, 1941.
4. Order directing that exhibits attached to stipulation and agreement be admitted into evidence.
5. Order admitting certain patents and oil and gas lease into evidence.
6. Findings of fact and conclusions of law.
7. Judgment.
8. Statement of points on which plaintiff intends to rely on appeal.
9. Stipulation designating parts of the record, proceedings and evidence to be included in the record on appeal.
10. Order Extending the time for filing the Record on Appeal and Docketing the Action.
11. Notice of Appeal.

Said stipulation and agreement is entered into by authority of Rule 75 (f) Rules of Civil Procedure for the District Court of the United States.

United States of America, Plaintiff, By William H. Landram, Assistant United States Attorney for Plaintiff. Oklahoma Tax Commission, Defendant, By A. Francis Porta, Attorney for Defendant.

[File endorsement omitted.]

[fols. 99-102] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING THE TIME FOR FILING THE RECORD ON
APPEAL AND DOCKETING THE ACTION—Filed May 2, 1942

Now on this 2nd day of May, 1942, for good cause shown, it is ordered that the time for filing the record on appeal and

docketing the action is extended for a period of thirty (30) days from the date hereof.

Eugene Rice, Judge.

[File endorsement omitted.]

• • • • •

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 103] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 2560

UNITED STATES OF AMERICA, Appellant,

vs.

OKLAHOMA TAX COMMISSION OF THE STATE OF OKLAHOMA,
Appellee

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO
RELY ON APPEAL, AND DESIGNATION OF PARTS OF THE RECORD
TO BE PRINTED—Filed May 15, 1942

Comes now the above named appellant, United States of America, by William H. Landram, Assistant United States Attorney for the Eastern District of Oklahoma, and pursuant to Rule 13 of the Revised Rules of the United States Circuit Court of Appeals for the Tenth Circuit, states that the point on this appellant intends to rely on appeal in the above case is as follows:

1. No part of the restricted estate of a deceased allottee of the Five Civilized Tribes of Oklahoma is subject to the estate and inheritance tax laws of the State of Oklahoma.

Designation of Parts of Record and Proceedings To Be
Printed

The Clerk will cause to be printed for the consideration of the court in deciding this case the following parts of the record:

1. Complaint and Exhibits of Plaintiff.
2. Answer of Defendant.

3. Stipulation and agreement filed July 15, 1941.
 4. Order Admitting Certain Patents and Oil and Gas Lease into Evidence.
 5. Findings of Fact and Conclusions of Law.
- [Vol. 104] 6. Judgment.
7. Notice of Appeal.
 8. Order Extending the Time for Filing the Record on Appeal and Docketing the Action.
 9. Statement of Points on which the United States of America intends to rely on appeal.
 10. Stipulation Designating Parts of the Record, Proceedings and Evidence to be Included in the Record on Appeal.
 11. This Statement of Points on which Appellant Relies and Designation of Parts of the Record and Proceedings to be Printed.

United States of America, by William H. Landram,
Assistant United States Attorney, Attorney for
Appellant.

STATE OF OKLAHOMA,
County of Muskogee, ss:

Affidavit of Mailing

William H. Landram, of lawful age, being first duly sworn upon his oath, deposes and states:

That on the 13th day of May, 1942, he enclosed a copy of the above and foregoing statement of points on which appellant intends to rely on appeal, and designation of parts of the record and proceedings to be printed, in an envelope addressed to A. Francis Porta, Attorney, Oklahoma Tax Commission, State Capitol Building, Oklahoma City, Oklahoma; said envelope was securely sealed and being United States Government mail required no postage; said affiant deposited said envelope in the United States Post Office at Muskogee, Oklahoma, on the date aforesaid.

William H. Landram.

Subscribed and sworn to before me this 13th day of May, 1942. Chas. T. Diffendaffer, Notary Public.
My commission expires 11-7-1945. (Seal.)

[File endorsement omitted.]

[fol. 105] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF OKLAHOMA

Civil Action. No. 419

UNITED STATES OF AMERICA, Plaintiff,

vs.

OKLAHOMA TAX COMMISSION OF THE STATE OF OKLAHOMA,
Defendant

COMPLAINT—Filed December 7, 1940

Comes now the plaintiff, United States of America, by Cleon A. Summers, United States Attorney for the Eastern District of Oklahoma, and William H. Landram, Assistant United States Attorney, by authority of the Attorney General of the United States, and at the request of the Secretary of the Interior, in its own behalf and for and on behalf of the Estate of Wosey Deere, deceased full-blood Creek Indian, enrolled opposite Roll No. 9546, and for cause of action against the defendant alleges and states:

I

That the defendant, Oklahoma Tax Commission, was created by the laws of the State of Oklahoma and given the power and authority to make assessments and collections, among other things, of estate and inheritance taxes levied and assessed against estates of deceased persons within the State of Oklahoma;

II

That Wosey Deere, full-blood restricted Creek Indian, enrolled opposite Roll No. 9546, departed this life on or about September 2, 1938, while a resident in good faith of the State of Oklahoma; that according to law the real and personal property belonging to the said Wosey Deere, now deceased, was restricted from alienation, encumbrance and [fol. 106] taxation; that said property was under the control and supervision of the Superintendent for the Five Civilized Tribes, the Secretary of the Interior, and the Plaintiff herein; that the said Wosey Deere, now deceased, was at all times during her lifetime a ward of the plaintiff herein;

III

That the defendant herein assessed the estate of Wosey Deere, a deceased restricted member of the Five Civilized Tribes, as estate and inheritance taxes, the sum of Nineteen Thousand Twenty-eight and 77/100 Dollars (\$19,028.77); that the Secretary of the Interior and plaintiff herein on the 3rd day of December, 1940, paid to the defendant herein, under protest, the amount of the assessment of said taxes in the sum of Nineteen Thousand Twenty-eight and 77/100 Dollars (\$19,028.77); A duplicate copy of an official receipt of payment of said taxes to said defendant is hereto attached, marked Exhibit "A", incorporated herein and made a part hereof.

IV

Plaintiff further alleges and states that all property belonging to the estate of Wosey Deere, a restricted member of the Five Civilized Tribes, is restricted and subject to and under the control and supervision of the Secretary of the Interior and the plaintiff by Acts of Congress and laws of the United States;

V

Plaintiff further alleges and states that the defendant had no right, authority or power, either at law or in equity, to assess the estate of Wosey Deere, a deceased restricted member of the Five Civilized Tribes, for inheritance and estate taxes, as same is an assessment against the plaintiff herein and contrary to law; that the said plaintiff is entitled to recover the amount of the assessment paid to the defendant by the plaintiff herein.

VI

That there was allotted and patented to Wosey John, now Deere, as her homestead allotment the non-taxable and restricted lands described as follows:

[fol. 107] The Northeast Quarter of the Southwest Quarter of Section Twenty-eight (28), Township Fourteen (14) North, Range Seven (7) East, Creek County, Oklahoma;

A certified photostatic copy of the homestead allotment deed is attached hereto, marked Exhibit "B" and made a part hereof.

VII

That there was allotted and patented to Wosey John, now Deere, as her surplus allotment the non-taxable and restricted land described as follows:

The Southeast Quarter of the Southwest Quarter and the West Half of the Southwest Quarter of Section Twenty-eight (28), Township Fourteen (14) North, Range Seven (7) East, Creek County, Oklahoma.

A certified photostatic copy of the surplus allotment deed is attached hereto, marked Exhibit "C" and made a part hereof;

VIII

That a certificate designating 160 acres of the above described lands as tax exempt was filed for record in the office of the County Clerk of Creek County, Oklahoma, on May 2, 1930; A certified photostatic copy of said certificate is attached hereto, marked Exhibit "D" and made a part hereof.

IX

Plaintiff further alleges and states that at the time of making said payment of taxes to the Tax Commission it gave notice to said Tax Commission of its intention to file suit for recovery of said taxes; said notice so given is attached hereto, marked Exhibit "E", incorporated herein and made a part hereof.

Wherefore, plaintiff demands judgment against the defendant in the sum of Nineteen Thousand Twenty-eight and 77/100 Dollars (\$19,028.77), plus interest at the rate of 3% per annum from the date of payment by said Secretary of the Interior and plaintiff herein until paid; plaintiff further demands that the said defendant be permanently [fol. 108] enjoined and restrained from assessing or collecting estate or inheritance taxes from the estate of a deceased member of the Five Civilized Tribes, and more particularly the estate of Wosey Deere, full-blood restricted Creek Indian, now deceased, and such temporary and permanent relief as plaintiff may show itself entitled, and for its costs herein expended.

Cleon A. Summers, United States Attorney. William H. Landram, Assistant United States Attorney.

[File endorsement omitted.]

[fol. 109-110]
OTC Form C-102

EXHIBIT A TO COMPLAINT

State of Oklahoma
Oklahoma Tax Commission
Oklahoma City, Oklahoma

The report or return hereby acknowledged,
as stated below, is accepted subject to final
audited tax liability.
The accompanying remittance is subject to
final audit and solvent credits. Penalties, as
provided by law, will attach the same as if no
remittance had been made, when, for any reason
checks, drafts or other exchange are returned
unpaid.

Total Tax Payable	Amount of Remittance	Unpaid Balance	Name of Taxpayer Street, R. F. D. or Box	City or Town
14,908.67	Dec 2 40		Wosey John now Deere, U S of America through the Five Tribe Agency	Dec'd full blood Creek # 9546,

Official Receipt of
Report, Or Return and
Remittance As Shown

Key Letter Shows Kind of Tax Paid

A—Motor Fuel	L—Fuels Excise
B—Corporation License	M—Sales Tax
C—Gross Production	N—Cigarette
D—Inheritance Tax	P—Proration Fund
E—Income Tax	Q—Beverage
F—Mileage Tax	R—Freight Car Tax
G—Use Tax	T—Alcohol Permit
H—Special Fuel Use	U—Used Equipment
K—Miscellaneous Tax	V—Tokens

Receipt Number	State
Muskogee, Okla 1,489	D
G. H. Storms, Cashier.	

[fol. 111]

EXHIBIT B TO COMPLAINT**Homestead Deed****Creek Indian Roll, No. 9546****The Muskogee (Creek) Nation,
Indian Territory****To All Whom These Presents Shall Come, Greeting:**

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, The said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Wosey John, a citizen of said tribe, as a homestead.

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Wosey John, all right, title, and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following-described land, viz: The North East quarter of the South West quarter of Section Twenty-eight (28), Township Fourteen (14) North, and Range Seven (7) East, of the Indian Base and Meridian, in Indian Territory, containing Forty (40) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the conditions provided by said Act of Congress, and which conditions are that said land shall be nontaxable and inalienable and free from any incumbrance whatever for twenty-one years; and subject, also, to provisions of [fol. 112] said Act of Congress relating to the use, devise,

and descent of said land after the death of the said Wosey John; and subject, also, to all provisions of said Act of Congress relating to appraisement and valuation and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 14th day of January, A. D. 1904.

P. Porter, Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior, Approved Feb. 5, 1904.
Ethan A. Hitchcock, Secretary, by Oliver A. Phelps, Clerk.
L R S. (Seal.)

Filed for record on the 12 day of February, 1904, at
4 o'clock P. M.

Department of the Interior
Office of
Superintendent for the Five Civilized Tribes
Muskogee, Oklahoma

This is to certify that I am the officer having custody of the records of deeds of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Nations, and the above and foregoing is a true and correct copy of the deed issued to Wosey John, Creek 9546, full blood, as the name appears of record in Book No. V, page 66, of Creek Homestead Deed Records.

J. T. Wilkinson, Asst. to Superintendent. (Seal.)

January 3, 1941.

EXHIBIT C TO COMPLAINT

Allotment Deed
Creek Indian Roll, No. 9546
The Muskogee (Creek) Nation,
Indian Territory

To All Whom These Presents Shall Come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, The said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Wosey John, a citizen of said tribe, as an allotment, exclusive of a forty-acre homestead, as aforesaid,

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Wosey John, all right, title, and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following-described land, viz: The South East quarter of the South West quarter and the West Half of the South West quarter of Section Twenty-eighth (28), Township Fourteen (14) North, and Range Seven (7) East, of the Indian Base and Meridian, in Indian Territory, containing One Hundred and Twenty (120) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all provisions of said Act of Congress [fol. 114] relating to appraisement and valuation and to

the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 14th day of January, A. D. 1904.

P. Porter, Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior, Approved Feb. 5, 1904.
Ethan A. Hitchcock, Secretary, by Oliver A. Phelps, Clerk.
L R S. (Seal.)

Filed for record on the 12 day of February, 1904, at 4 o'clock P. M.

Department of the Interior
Office of
Superintendent for the Five Civilized Tribes
Muskogee, Oklahoma

This is to certify that I am the officer having custody of the records of deeds of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Nations, and the above and foregoing is a true and correct copy of the deed issued to Wosey John, Creek 9546, full blood, as the name appears of record in Book No. 22, page 66, of Creek Allotment Deed Records.

J. T. Wilkinson, Asst. to Superintendent. (Seal.)

January 3, 1941.

[fol. 115] EXHIBIT D TO COMPLAINT

Certificate 518

Designating Lands Exempt from Taxation

Five Civilized Tribes

Muskogee, Okla., July 31, 1929.

Pursuant to Section 4 of the Act of Congress of May 10, 1928 (Public No. 360, 70th Congress), the following described restricted Indian lands belonging to Wosey John, Sapulpa, Oklahoma, a full blood citizen of the Creek Roll

No. 9546, are hereby selected and designated as tax exempt as long as the title thereto remains in the said Wosey John, or in any full blood Indian heir or devisee of said lands; such tax exemption, in no event, however, to extend beyond April 26, 1956.

Subdivision	Sec.	Twp.	Range	Area	County
SW4	28	14N	7E	160	Creek✓

✓ *Wosey John.

Department of the Interior

Washington, D. C.

Feb. 3, 1930.

Approved:

Jos. M. Dixon,
First Assistant Secretary.

8WL-17

5-670

STATE OF OKLAHOMA,
County of Creek:

This instrument was filed in my office for record on May 2, 1930, 10 o'clock A. M., and duly recorded in Book 395 of page 61.

Erma Morris, County Clerk, by Gertrude Davidson,
Deputy.

[fol. 116] Filed for record on the 25 day of June, 1931,
at 9 o'clock A. M., and recorded in Book 20, Page 18.

A. M. Landman, Supt. for the Five Civilized Tribes,
by Gertrude Hooton, Clerk.

Department of the Interior

Office of Superintendent for the Five Civilized Tribes, Mus-
kogee, Oklahoma

This is to certify that I am the officer having custody of
the records pertaining to the enrollment of the members
of the Choctaw, Chickasaw, Cherokee, Creek and Seminole

*To be signed by the Indian, or by the Superintendent if
the Indian is a minor, incompetent adult, or where the In-
dian fails to designate.

Tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of certificate designating lands exempt from taxation of Wosey John, Creek Fullblood Roll No. 9546.

J. T. Wilkinson, Asst. to Superintendent. (Seal.)

Jan. 3, 1941.

EXHIBIT E TO COMPLAINT

STATE OF OKLAHOMA,
County of Muskogee:

Notice of Intention to File Suit For Recovery of Taxes

To the Oklahoma Tax Commission, State of Oklahoma:

Take notice that the United States of America, acting on behalf of the Secretary of the Interior, and the estate of Wosey Deere, deceased full-blood Creek Indian, Roll No. 9546, intends to file suit for recovery of estate and inheritance taxes paid on this date by the United States of America and the Secretary of the Interior in the sum of \$14,908.67, being the sum assessed by you as estate and inheritance taxes against said estate.

Cleon A. Summers, United States Attorney, William H. Landram, Assistant United States Attorney.

I acknowledge receipt of a copy of the above notice of intention of the United States of America to file suit for [fol. 117] recovery of the estate and inheritance taxes on this Dec. 3-1940 3 day of December, 1940.

Oklahoma Tax Commission, by J. D. Dunn, Vice-Chairman.

IN UNITED STATES DISTRICT COURT

ANSWER AND AFFIDAVIT OF SERVICE—Filed February 28, 1941

Comes now the defendant, Oklahoma Tax Commission, and for its answer to the complaint filed herein denies each and every material allegation therein contained, except as hereinafter specifically admitted, and demands strict proof thereof.

I

Defendant admits the allegations contained in paragraphs numbered I, VI, VII and IX of the complaint.

II

Defendant alleges that it is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraphs numbered IV and VIII of the complaint.

III

Defendant admits that Wosey Deere was a full-blood Creek Indian, enrolled as such opposite Creek Roll No. 9546, and that she departed this life on or about September 2, 1938, while domiciled in and a resident in good faith of the State of Oklahoma; defendant alleges that as to the remaining allegations of paragraph numbered II of the complaint, it is without knowledge or information sufficient to form a belief as to the truth thereof.

IV

Defendant alleges that Wosey Deere was the owner at the time of her death, of an estate of the gross value of \$359,633.45; that said estate has been valued by the defendant for inheritance and transfer tax purposes at the net value of \$318,794.07, as of the date of the death of Wosey Deere; that said estate, upon the death of said Wosey Deere [Sep-
[fol. 118] tember 2, 1938), passed and was transferred to her surviving husband, son and two daughters in different shares under and pursuant to the intestate laws (Laws of Descent and Distribution) of the State of Oklahoma; that the defendant, pursuant to the inheritance and Transfer Tax Law of the State of Oklahoma in force and effect at the time of the death of the said Wosey Deere, assessed inheritance and transfer tax on the transfer of her said estate aggregating the total sum of \$14,908.67; that said transfer was subject to the tax assessed; that said tax was paid to defendant by the Secretary of the Interior on the 3rd day of December, 1940, under protest; defendant admits issuance of "Exhibit A" attached to the complaint; defendant denies that it assessed the estate of Wosey Deere an estate and inheritance tax in the amount of \$14,908.67, or any other amount; defendant alleges that it is without knowl-

edge or information sufficient to form a belief as to the truth of the allegation that Wosey Deere was, at the time of her death, a restricted member of the Five Civilized Tribes.

V

Defendant denies each and every allegation contained in paragraph numbered V of the complaint; alleges that upon the death of Wosey Deere, her said estate passed, as hereinabove stated, to her surviving husband, son and two daughters in different shares; that the transfer of said estate was under and pursuant to the intestate laws (Laws of Descent and Distribution) of the State of Oklahoma, and subject to the Oklahoma Inheritance and Transfer Tax; that said estate was subject to valuation for inheritance and transfer tax purposes under the laws of the State of Oklahoma; that the defendant, pursuant to its duty and authority under the laws of the State, determined, as aforesaid, the net value of said estate and fixed the same at \$318,794.07, and assessed and collected Oklahoma inheritance and transfer tax upon the transfer thereof in the aggregate sum of \$14,908.67.

Wherefore, Defendant, having fully answered the complaint filed herein, demands judgment under which plaintiff shall be denied the relief sought, and under which plaintiff's [fol. 119] action shall be dismissed, and for all of its costs in and about this matter laid out and expended.

F. M. Dudley, Attorney for Defendant.

Address: State Capitol Building, Oklahoma City, Oklahoma.

STATE OF OKLAHOMA,
County of Oklahoma, ss:

F. M. Dudley, of lawful age, being first duly sworn, states that he is the Attorney for the Oklahoma Tax Commission, defendant in the above numbered and styled cause; that on February 27, 1941, he served a true and correct copy of the above and foregoing answer on the plaintiff by depositing, on said date in the United States Post Office, Capitol Station, Oklahoma City, Oklahoma, a copy of said answer, in a sealed envelope addressed to Mr. Wm. H. Landram, As-

sistant United States Attorney, Federal Building, Muskogee, Oklahoma, attorney for said plaintiff, with postage thereon fully prepaid.

F. M. Dudley.

Subscribed and sworn to before me this 27 day of February, 1941. R. R. Burnham, Notary Public.
My commission expires Dec. 28, 1941. (Seal.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION AND AGREEMENT—Filed July 15, 1941

Come now the plaintiff, United States of America, by Wm. H. Landram, Assistant United States Attorney and attorney for the plaintiff, and the defendant, Oklahoma Tax Commission of the State of Oklahoma, by F. M. Dudley, attorney for the defendant, and stipulate and agree as follows:

1

That the defendant, Oklahoma Tax Commission, was created by the laws of the State of Oklahoma and, besides other things, was given the power and charged with the duty of assessing and collecting inheritance and transfer taxes laid under the State of Oklahoma.

[fol. 120]

2

That Wosey Deere was a Creek Indian of the full-blood and was enrolled as such opposite Creek Roll No. 9546, and that she departed this life on or about September 2, 1938, while domiciled in, and a resident in good faith of the State of Oklahoma; and that said decedent was at the time of her death, and had been at all times since November 16, 1907, a resident in good faith of and domiciled in the State of Oklahoma; and that said decedent left surviving her husband, Milford Thomas, a seven-eighths blood Cherokee Indian; two daughters and one son, Creek Indians of the full blood.

3

That there was allotted and patented to Wosey Deere, as her homestead allotment, the following described lands:

The Northeast Quarter of the Southwest Quarter Section 28, Township 14 North, Range 7 East, Creek County, Oklahoma,

and that there was allotted and patented to Wosey Deere, as her surplus allotment, the following lands:

The Southeast Quarter of the Southwest Quarter; and the West Half of the Southwest Quarter, Section 28, Township 14 North, Range 7 East, Creek County, Oklahoma.

That Wosey Deere was the owner of the above described lands at the time of her death.

4

That Wosey Deere inherited from her full blood Creek grandfather, Sak-quanny Long, at his death in 1915, and owned at the time of her death, the following described lands:

The Southwest Quarter of Section 9, Township 18 North, Range 7 East, Creek county, Oklahoma;

and said Wosey Deere also owned at the time of her death four-fifths interest in the following described lands:

[fol. 121] The Northeast Quarter of the Southwest Quarter, Section 2, Township 14 North, Range 7 East, Creek County, Oklahoma.

5

That after Wosey Deere became the owner by inheritance, as aforesaid, of the Southwest Quarter of Section 9, Township 18 North, Range 7 East, Creek County, Oklahoma, and during her lifetime, said lands were leased for oil and gas mining purposes under a departmental oil and gas mining lease or leases, approved by the Secretary of the Interior, for a period of ten years, or as long thereafter as oil and gas is produced in paying quantities. Production was had under said lease or leases from said Southwest Quarter of Section 9, Township 18 North, Range 7 East, Creek County, Oklahoma, about 1915 and during the lifetime of said de-

cedent, Wosey Deere, and the Secretary of the Interior received, under the provisions of said lease or leases, from 1915 to date of decedent's death, the royalty payments or income belonging to said decedent on account thereof. That out of such royalty payments, so received by the Secretary of the Interior, said Secretary purchased for Wosey Deere United States Treasury Bonds, and at the time of the death of Wosey Deere there was credited to her account on the books of the Interior Department United States Treasury Bonds of a total face value of \$295,304.38, and the fair market value of these Bonds, with accrued interest thereon at the date of Wosey Deere's death, was \$297,763.31; that all such royalty payments received by the Secretary of the Interior in excess of the amount or amounts invested by him, as aforesaid, in United States Treasury Bonds were deposited by said Secretary, along with all other funds currently received by him on behalf of all restricted Indians, in banks to his own account, and said Secretary gave Wosey Deere credit therefor on the books of the Interior Department.

That at the time of Wosey Deere's death there were credited to her account, on the books of the Interior Department, United State Treasury Bonds, so purchased as aforesaid by the Secretary of the Interior, of the face value of \$295,304.38, with interest accrued thereon in the amount of [fol. 122] \$2,458.93, and at the time of said Wosey Deere's death she had a cash credit on the books of the Interior Department, created as aforesaid, in the amount of \$40,772.19.

6

That Wosey Deere was the owner at the time of her death of an estate of the gross value of \$359,633.45, consisting of the following:

The SW $\frac{1}{4}$ of Section 9, Township 18 North, Range 7 East, Creek County, Oklahoma, (inherited from her grandfather) above mentioned under paragraphs 4 and 5	\$800.00
---	----------

The NE $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 2, Township 14 North, Range 7 East, Creek County, Oklahoma, (4/5 interest) mentioned above under paragraph 4.	\$350.00
--	----------

The Southwest Quarter of Section 28, Township 14 North, Range 7 East, Creek County, Oklahoma, mentioned under paragraph 3 above:	\$2,700.00
--	------------

The SW $\frac{1}{4}$, Section 9, Township 18 North, Range 7 East,
Creek County, Oklahoma : \$440.00,

per month income during the year of the death of Wosey
Deere (This land produced oil and gas since 1915) \$13,000.00

United States Treasury Bonds credited to the account of
Wosey Deere on the books of the Interior Department at
the time of her death mentioned under paragraph 5 above,
\$295,304.38

Interest accrued on said Bonds, \$2,458.93

Cash credit, mentioned under paragraph 5 above, on the
books of the Interior Department, \$40,772.19

Wrecked automobile, \$75.00

Judgment in case Wosey Deere vs. Shell Petroleum Co.,
No. 2694—Law, U. S. District Court, Northern District of
Oklahoma : \$500.00

Miscellaneous items: \$1,511.95

Life insurance policy of General American Life Insurance Company, St. Louis, Missouri, in favor of decedent's [fol. 123] three children, on which \$7,387.00 was paid to each; total \$22,161, less \$20,000.00

exemption: \$2,161.00
Total: \$359,633.45

7

That Wosey Deere died intestate and her said estate aforesaid, was transferred and passed to her 7/8 blood Indian husband and two daughters and son, all full-bloods.

That Wosey Deere's gross estate, of the value of \$359,633.45, was valued by the defendant, Oklahoma Tax Commission, for Oklahoma inheritance tax purposes, at the net value of \$318,794.07 as of the date of said decedent's death. That said defendant, acting pursuant to the Oklahoma Inheritance and Transfer Tax Law in force at the time of Wosey Deere's death, assessed inheritance and transfer tax in the aggregate of \$14,908.67.

That the Secretary of the Interior on the 3rd day of December, 1940, paid to the defendant, Oklahoma Tax Commission, under protest, said sum and received therefor an official receipt of payment, which receipt is attached to the

complaint, marked "Exhibit A", incorporated therein and made a part thereof.

8

That all of the funds, including United States Treasury Bonds above mentioned, belonging to the decedent at the time of her death, were then and have been at all times since then, retained and supervised by the Secretary of the Interior.

9

That "Exhibit D" attached to and made a part of the complaint was filed of record in the office of the County Clerk of Creek County, Oklahoma on May 2, 1930.

10

That if the transfer of Wosey Deere's estate be subject to the Oklahoma inheritance and transfer tax in force and [fol. 124] effect at the time of her death, it is agreed that the net value of her said estate was \$318,794.07, as of that date, and that the inheritance and transfer tax of \$14,908.67, assessed on the transfer of said estate was and is the correct amount of tax. Should it be ultimately determined by the Court that only a part of the estate of decedent was subject to the Oklahoma Inheritance and Transfer Tax then and in that event the tax will have to be recomputed.

11

That Wosey Deere is one and the same person as Wosey John and Wosey Thomas.

12

That the tax so paid by the Secretary of the Interior to the defendant, Oklahoma Tax Commission, was paid under protest and at the time of making said payment the Secretary of the Interior gave notice in writing to the defendant of his intention to file suit for the recovery of said tax.

13

That the credits hereinabove mentioned were carried on the books of the Interior Department, kept by the Superintendent of the Five Civilized Tribes at Muskogee, Oklahoma.

Whether or not the lands, or any part thereof, described in this stipulation were restricted at the time of or subsequent to the death of decedent is a question of law upon which the parties are not agreed; However, it is agreed that the Secretary of the Interior never at any time issued any instrument removing restrictions on said lands or any part thereof. It is further agreed that either party may introduce in evidence certified copies of the patents under which said lands were originally patented.

It is Further Stipulated and Agreed by and between the parties hereto that each party reserves the right to introduce further testimony and evidence in support of its pleadings, which is not inconsistent with the facts herein stipulated.

Dated this 15th day of July, 1941.

United States of America, Plaintiff. William H. Landram, Assistant United States Attorney, Attorney for Plaintiff. Oklahoma Tax Commission, Defendant. F. M. Dudley, Attorney for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ADMITTING CERTAIN PATENTS AND OIL AND GAS LEASE INTO EVIDENCE—Filed October 11, 1941

Now on this 11th day of October, 1941, the United States of America, plaintiff herein, appeared by William H. Landram, Assistant United States Attorney for the Eastern District of Oklahoma, and reported to the court that in Part 14 of the Stipulation and Agreement filed herein by the plaintiff and the defendant, it was agreed that either party might introduce into evidence certified copies of the patents under which the lands involved herein were originally patented. The said plaintiff offers the hereinafter named certified copies of patents and oil and gas mining lease as evidence in this case.

The court finds that in accordance with the stipulation and agreement signed by the plaintiff and defendant, said

certified copies of the patents should be admitted into evidence in this case.

It is Therefore Ordered, Adjudged and Decreed by the court that the following certified copies of patents be admitted into evidence:

Homestead Deed Patent of Che-qua-wa—Exhibit "A".

Homestead Deed Patent of Wosey John—Exhibit "B".

Allotment Deed Patent of Wosey John—Exhibit "C".

Homestead Deed Patent of Sakquanny Long—Exhibit "D".

[fol. 126] It is further ordered, adjudged and decreed that a certified copy of the oil and gas mining lease, dated the 10th day of April, 1912, signed by Sakquanny Long be introduced into evidence and marked Exhibit "E".

Eugene Rice, Judge.

O. K. F. M. Dudley, Attorney for Defendant.

O. K. William H. Landram, Attorney for Plaintiff.

[File endorsement omitted.]

(Exhibits "B" and "C" are omitted for the reason same appear at pages 111 and 113 respectfully.)

EXHIBIT A

Homestead Deed

Creek Indian Roll, No. 9785

The Muskogee (Creek) Nation

Indian Territory

To All Whom These Presents Shall Come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, The said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Che-qua-wa, a citizen of said tribe, as a homestead,

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power [fol. 127] and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Che-qua-wa, all right, title, and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following-described land, viz: The North East quarter of the South West quarter of Section Two (2), Township Fourteen (14) North, and Range Seven (7) East, of the Indian Base and Meridian, in Indian Territory, containing Forty (40) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the conditions provided by said Act of Congress, and which conditions are that said land shall be non-taxable and inalienable and free from any incumbrance whatever for twenty-one years; and subject, also, to provisions of said Act of Congress relating to the use, devise, and descent of said land after the death of the said Che-qua-wa; and subject, also, to all provisions of said Act of Congress relating to appraisement and valuation and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 1st day of April, A. D. 1904.

P. Porter, Principal Chief of the Muskogee (Creek) Nation. (Seal.)

Department of the Interior.

Approved April 26, 1904. Ethan A. Hitchcock, Secretary,
by Oliver A. Phelps, Clerk. L. R. S.

**Department of the Interior
Office of
Superintendent for the Five Civilized Tribes
Muskogee, Oklahoma**

This is to certify that I am the officer having custody of the records of deeds of the Choctaw, Chickasaw, Cherokee, [fol. 128] Creek and Seminole Nations, and the above and foregoing is a true and correct copy of the deed issued to Che-qua-wa as the name appears of record in Book No. W, page 338, of Muskogee (Creek) Homestead Deed Records.

J. T. Wilkinson, Asst. to Superintendent. (Seal.)

May 6, 1942.

**EXHIBIT D
Homestead Deed
Creek Indian Roll, No. 8522
The Muskogee (Creek) Nation
Indian Territory**

To All Whom These Presents Shall Come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, The said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Sak quanny Long, a citizen of said tribe, as a homestead,

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power

and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Sak quanny Long, all right, title, and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation [fol. 129] in and to the following-described land, viz: The South East quarter of the South West quarter of Section Nine (9), Township Eighteen (18) North, and Range Seven (7) East, of the Indian Base and Meridian, in Indian Territory, containing Forty (40) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the conditions provided by said Act of Congress, and which conditions are that said land shall be nontaxable and inalienable and free from any incumbrance whatever for twenty-one years; and subject, also, to provisions of said Act of Congress relating to the use, devise, and descent of said land after the death of the said Sak quanny Long; and subject, also, to all provisions of said Act of Congress relating to appraisement and valuation and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 28th day of April, A. D. 1903.

P. Porter, Principal Chief of the Muskogee (Creek) Nation. (Seal.)

Department of the Interior.

Approved June 2, 1903. Ethan A. Hitchcock, Secretary,
By Oliver A. Phelps, Clerk. L. R. S.

Filed for record on the 2 day of July, 1903, at 1 o'clock
P. M.

Department of the Interior

Office of

Superintendent for the Five Civilized Tribes

Muskogee, Oklahoma

This is to certify that I am the officer having custody of the records of deeds of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Indians, and the above and foregoing is

a true and correct copy of the deed issued to Sak quanny [fol. 130] Long as the name appears of record in Book No. M, page 99, of Muskogee (Creek) Homestead Deed Records.

J. T. Wilkinson, Asst. to Superintendent. (Seal.)

July 15, 1941.

EXHIBIT E

United States
Department of the Interior
Office of Indian Affairs

Washington, July 24, 1941.

I, J. W. Hutchison, Acting Commissioner of Indian Affairs, do hereby certify that the papers hereunto attached are true copies of the originals as the same appear of record in this Office.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed on the day and year first above written.

J. W. Hutchison, Acting Commissioner. (Seal.)

Oil and Gas Mining Lease Upon Land Selected for Allotment

Creek Nation, Oklahoma

This Indenture of Lease, Made and entered into in quadruplicate on this 10th day of April, A. D. 1912, by and between Sakquanny Long of Kelleyville, Oklahoma, enrolled as a full blood citizen of the Creek Nation, Roll No. — party of the first part, hereinafter designated as lessor, and W. D. Cornelius of Muskogee, Oklahoma, party of the second part, [fol. 131] hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908 (35 Stat. L. P. 312), Witnesseth:

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations, and conditions hereinafter contained, and hereby agreed to be paid, observed, and performed by

the lessee, does hereby demise, grant, lease, and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil or gas is found in paying quantities, all the oil deposits and natural gas in or under the following described tract of land, lying and being within the county of Creek and State of Oklahoma, to-wit: The West Half of the Southwest Quarter and the Northeast Quarter of the Southwest Quarter. And the Southeast Quarter of the Southwest Quarter of section 9, township 18, range 7 East of the Indian Meridian, and containing 160 acres, more or less, with the exclusive right to prospect for, extract, pipe, store, and remove oil and natural gas, and to occupy and use so much only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas, also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to pay or cause to be paid to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, for the lessor, as royalty, the sum of 12½ per cent of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or removal of the oil. And the lessee shall pay as royalty on each gas producing well three hundred dollars per annum in advance, to be calculated from the date of commencement of utilization: Provided, however, in the case of gas wells of small volume, when the rock [fol. 132] pressure is one hundred pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree upon a royalty which will become effective as a part of this lease: Provided, further, That in cases of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such an extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the lessee shall have the option of paying royalties upon such gas wells of the same

percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in his residence on the leased premises, provided there be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well, which can not profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desires to retain gas producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from date of discovery of gas, on each gas producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty-five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.

3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to the Superintendent, Union Agency, Muskogee, Oklahoma, for lessor, as advance annual royalty, from the date of the approval of this lease, fifteen cents per acre per annum, annually, in advance, for the first and second years; thirty cents per acre per annum, annually, in advance, for the third and fourth years; seventy-five cents per acre per annum, annually, in advance, for the fifth year; and one dollar per acre per annum, annually, in advance, for each succeeding year of the term of this lease; it being understood and agreed [fol. 133] that such sums of money so paid shall be a credit on stipulated royalties, and the lessee hereby agrees that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by this lease and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior,

or shall pay to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, for the use and benefit of the lessor, for each whole year the completion of such well is delayed after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other consideration named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year, and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligation to pay such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such [fol. 134] officer as may be designated by him for the purpose, to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells, lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would accrue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled, or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirement shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in his

occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted; shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting the tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells which shall remain the property of the lessee, and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; and shall not permit any nuisance to be maintained on the premises under lessee's control, nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the same so as effectually to shut off all water from the oil-bearing stratum, or in the manner required by the laws of the State of Oklahoma.

[fol. 135] 6. The lessee shall keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchases, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all implements, tools, movable machinery, and all other personal chattels used in operating said property, and upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty.

7. The lessee may at any time, by paying to the Indian Superintendent all amounts then due as provided herein and the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder: Provided, if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office: Provided, further, in event restrictions are removed from all leased premises, the lessee may surrender all the undeveloped portion thereof, by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres

of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: Provided, however, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of any of the substantial terms and conditions of this lease the Secretary of the Interior (or lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right, at any time after thirty days' notice to the lessee specifying the terms or conditions violated, to declare this lease null and void, [fol. 136] and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or bonds as may be required by said Secretary, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restriction on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the

Secretary of the Interior as herein provided shall cease, and all payments required to be made to the United States Indian Superintendent shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the Sapulpa State Bank, of Sapulpa, Oklahoma, or at such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors, and lawful assigns of the parties hereto.

14. In witness whereof, the said parties have hereunto [fol. 137] subscribed their names and affixed their seals on the day and year first above mentioned.

Sakquanny Long, his (thumb print) mark. (Seal.)
W. D. Cornelius. (Seal.)

Attest:

Two witnesses to execution by lessor: Stephen B. Nelson, P. O., Sapulpa, Oklahoma; Moses Bailey, P. O., Sapulpa, Oklahoma.

Two witnesses to execution by lessee: J. A. Park, P. O., Muskogee, Oklahoma; G. G. Johnson, P. O., Muskogee, Oklahoma.

STATE OF OKLAHOMA,
County of Creek, ss:

..... before me, a Notary Public in and for said county and state, on this .. day of April, 1912, personally appeared Sakquanny Long, to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Orange B. Pickett. (My commission expires Aug.
17, 1915.) (Seal.)

**Department of the Interior
United States Indian Service, Union Agency**

Muskogee, Okla., May 29, 1912.

The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be Approved. See my report of even date.

(Sig. Illegible), United States Indian Superintendent.

[fol. 138] **Department of the Interior,
Office of Indian Affairs**

Washington, D. C., June 12, 1912.

Respectfully submitted to the Secretary of the Interior, with recommendation that it be Approved.

F. H. Abbott, Assistant Commissioner.

Department of the Interior

Washington, D. C., June 26, 1912.

Approved.

✓Connie A. Thompson, Assistant Secretary of the Interior.

Filed for record this 2 day of May, 1912, at 4 o'clock, P. M.

Dana H. Kelsey, Sup't. Union Agency, by R. W. Fields, O. C.

Advance Royalty Received \$24.00.

Lease No. 22773

**Department of the Interior
Washington, D. C.**

June 30, 1913.

The assignment of this lease by W. D. Cornelius, lessee, to Bernard B. Jones as to the NE/4 of the SW/4 and the SE/4 of the SW/4 of 9-18-7, containing 80 acres, is Approved, effective only from date of approval, subject to the orders and regulations of this Department now existing

or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

A. A. Jones, First Assistant Secretary.

Filed by L. M. G.

[fol. 139]

Lease No. 22773

Department of the Interior

Washington, D. C.

October 27, 1913.

The assignment of this lease by W. D. Cornelius to the Katy Oil Co. insofar as pertains to W/2 of SW/4 of Sec. 9, Twp. 18, R. 7 East, is Approved, effective only from date of approval, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

Louis C. Saylin, Assistant Secretary.

Lease No. 22773

Department of the Interior

Washington, D. C.

April 18, 1916.

The assignment of this lease by Bernard B. Jones, assignee, to the Bermont Oil Company insofar as pertains to the E½ SW¼, Sec. 9, T. 18, R. 7, 80 acres, is Approved, effective only from date of approval, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

B. O. Sweeney, Assistant Secretary. EBM H

Lease No. 22773

Department of the Interior

Washington, D. C.

December 20, 1916.

The assignment of this lease by the Bermont Oil Company, assignee, to the Prairie Oil and Gas Company inso-[fol. 140] far as pertains to the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Sec. 9, T. 18, R. 7, is Approved, with the understanding and provision that no rights, claims, or equities, as against future action by or under authority of Congress respecting oil or gas pipe line companies, shall be predicated upon this approval and subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12 $\frac{1}{2}$ per cent on such price basis.

B. O. Sweeney, Assistant Secretary. EB Mc

Lease No. 22773

Department of the Interior

Washington, D. C.

March 9, 1918.

The assignment of this lease insofar as it pertains to the W/2 of SW $\frac{1}{4}$ 9-18-7 E., by Katy Oil Company to Sinclair Oil and Gas Co. is Approved, effective only from date of approval, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12 $\frac{1}{2}$ per cent on such price basis.

Alexander V. (Illegible), First Assistant Secretary.

C J g B EB W EBM

IN UNITED STATES DISTRICT COURT

Findings of Fact and Conclusions of Law—Filed December 18, 1941

This action was instituted by the United States for itself and in behalf of the estate of Wosey Deere, deceased full-blood Creek Indian, to recover the sum of \$14,908.67, with interest, representing the amount assessed by the Oklahoma Tax Commission as an inheritance tax upon the transfer [fol. 141] of the estate of said Wosey Deere, who died intestate September 2, 1938. The tax was paid under protest by the Secretary of the Interior and the United States, and this action is to recover same pursuant to the provisions of 68 Okl. Ann., Sec. 1475.

The cause was tried before the Court and submitted upon written briefs of the parties. The material facts were stipulated.

FINDINGS OF FACT

The facts as stipulated were reduced to writing, signed by the parties and filed herein. The court finds the facts to be as stipulated. Briefly summarized the essential facts for determination of this cause are as follows:

I

Wosey Deere is one and the same person as Wosey John and Wosey Thomas.

II

Wosey Deere was a full-blood Creek Indian, enrolled as such opposite Creek Roll No. 9546. She died intestate, September 2, 1938, while domiciled in and a resident in good faith of the State of Oklahoma. She left surviving as her sole heirs at law her husband, Milford Thomas, a seven-eighth's blood Cherokee Indian; two daughters and one son all full-blood Creek Indians. See Seber vs. Thomas, 108 F. (2d) 856.

III

Wosey Deere died seized of the following estate:

Real Property:

Her homestead and surplus allotments consisting of 160 acres,

The inherited allotment of her full-blood Creek grandfather consisting of 160 acres,

Four-fifth's interest in forty acres of land (the stipulation does not disclose how this land was acquired),
 [fol. 142] Personal Property:

U. S. Treasury Bonds purchased for her account out of proceeds from the sale of oil and gas produced from her inherited lands,

Cash credit on the books of the Interior Department representing proceeds from the sale of said oil and gas (both the bonds and the cash were in the custody of and in the control of the Secretary of the Interior at the time of the death of Wosey Deere,)

A judgment against the Shell Petroleum Company for the sum of \$500,

Miscellaneous items valued at \$1,511.95.

In addition to the real and personal property the decedent left life insurance payable to her three full-blood children in the sum of \$22,161. The state in figuring the tax herein treated \$2,161 of this insurance as subject to the tax. The gross value of the said estate was \$359,643.45 and was valued by the Oklahoma Tax Commission for inheritance tax purposes at the net value of \$318,794.07.

IV

A certificate designating 160 acres of Wosey Deere's lands (this 160 acres being her homestead and surplus allotments) as tax-exempt was filed for record in the office of the County Clerk of Creek County, Oklahoma, on May 2, 1930.

V

The Secretary of the Interior, never at any time issued any instrument removing restrictions on said lands or any part thereof; and all of the funds, including the United States Treasury Bonds, belonging to decedent at the time of her death, were then and have been at all times since then, retained under the supervision and control of the Secretary of the Interior and the credits therefor were carried upon the books of said Department, kept by the Superintendent for the Five Civilized Tribes at Muskogee, Oklahoma.

[fol. 143]

VI

The defendant Oklahoma Tax Commission, acting pursuant to The Oklahoma Inheritance and Transfer Tax Law in force at the time of Wosey Deere's death, assessed an in-

heritance tax upon the transfer of her estate in the sum of \$14,908.67, which is the correct amount of tax if said transfer is taxable in its entirety.

VII

On December 3, 1940, the Secretary of the Interior paid said tax to the defendant, under written protest; and at such time the Secretary gave notice in writing to the defendant of his intention to file suit for the recovery of said tax.

CONCLUSIONS OF LAW

I

This is a suit of a civil nature brought by the United States of which this court has original jurisdiction, 28 U. S. C. A. Sec. 41 (1).

II

All the real property with the possible exception of the 4/5's interest in forty acres owned by Wosey Deere was restricted. One hundred sixty acres of all her lands was tax-exempt. The income derived from her inherited lands and subject to the control and in the custody of the Secretary of the Interior was restricted. In the hands of the full-blood heirs all the real property was restricted. As to the 7/8's blood heir, the interest in the inherited tax-exempt 160 acres was restricted. The personal property in the custody and control of the Secretary of Interior was restricted in hands of all the heirs. Secs. 1 and 8, Act of January 27, 1933 (47 Stat. 777); Sec. 9, Act of May 27, 1908 (35 Stat. 315) as amended by Sec. 1, Act of April 12, 1926 (44 Stat. 239); Sec. 2, Act of May 10, 1928 (45 Stat. 495); Glenn v. Lewis, 105 F. (2d) 398.

III

The applicable Oklahoma Law provides as follows:

"A tax is hereby levied upon the transfer of the net estate of every decedent, * * * of property, real, personal or [fol. 144] mixed, whether tangible or intangible, or any interest therein or income therefrom, by will or the intestate laws of this State, * * *."

Art. 5, Chap. 66, S. L. of Oklahoma, 1935.

IV

An inheritance tax or transfer tax such as is provided by the Oklahoma law is not levied on the property of which the estate is composed. It is an excise tax upon the shifting of economic benefits, on the privilege of transferring property at death, on the transitus of the property from the dead to the living, *United States Trust Co. v. Helvering*, 307 U. S. 57; *United States v. Perkins*, 163 U. S. 625, *McGannon v. State*, 33 Okl. 145, 124 P. 1063, *Knowlton v. Moore*, 178 U. S. 41, *Landman v. Commissioner of Internal Revenue* (C. C. A. 10th) 123 F. (2d) —, decided November 11, 1941, and cases cited therein.

V

This case is primarily concerned with the question of whether or not a transfer or inheritance tax may be levied by the State of Oklahoma upon the estate of a full-blood Indian which estate consisted principally of restricted property, restricted in the hands of the decedent and in the hands of the heirs. A tax upon the transfer of property is valid even though the property is restricted and tax-exempt. *Plummer v. Coler*, 178 U. S. 115; *Orr v. Gilman*, 183 U. S. 278; *United States Trust Co. v. Helvering*, *supra*. The transfer of the restricted estate of a full-blood restricted member of one of the Five Civilized Tribes is subject to the Federal Estate Tax. Such an estate is not deemed exempt from a transfer tax on the ground that it is a Federal instrumentality. It is not deemed a Federal instrumentality. *Landman v. Commissioner of Internal Revenue*, *supra*, and cases cited therein.

VI

The estate herein passed under the intestate laws of the State of Oklahoma. Members of the Five Civilized Tribes are citizens of the State of Oklahoma, *Bolen v. Nebraska*, 176 U. S. 831, *Hickman v. United States*, 224 U. S. 413. As [fol. 145] to the members of the Five Civilized Tribes it has been the policy of Congress to subject the estates of members of said tribes to the control of the local laws of succession. Sec. 23 of the Act of April 26, 1906 (34 Stat. 137) as amended; Sec. 9 of the Act of May 27, 1908 (35 Stat. 312) as amended; *Blundell v. Wallace*, 267 U. S. 373, *Jackson v. Harris* (C. C. A 10th) 43 F. (2d) 513; *Jefferson*

v. Fink, 247 U. S. 288. Dunn v. Micco (C. C. A. 10th) 106 F. (2d) 356.

VII

Congress has the power to control the devolution of the estates of members of the Five Civilized Tribes. The State of Oklahoma concedes that Congress has this power, but contends that Congress has seen fit, by its various acts, to make applicable, the laws of the State of Oklahoma to the devolution of the estates of the members of the Five Civilized Tribes. The construction of these acts of Congress and a consideration of whether or not the laws of Congress or the laws of the State of Oklahoma control the devolution of the estates of members of the Five Civilized Tribes is a Federal question and the decisions of the Federal courts are controlling. The Federal decisions, both of the Circuit Court, and the Supreme Court in Blundell v. Wallace, *supra*, seem to settle this question in favor of defendant's contention. Childers v. Beaver, 270 U. S. 555 and Blanset v. Cardin, 256 U. S. 319, relied upon by the Government involved the estate of a Quapaw Indian and a construction of the Act of June 25, 1910 (36 Stat. 855) applicable to the Quapaw Indians. This act of Congress, Sec. 33 provides:

"That the provisions of this Act shall not apply to the Osage Indians, nor to the Five Civilized Tribes, in Oklahoma.
• • •"

VIII

The estate in question passed under the intestate laws of the State of Oklahoma and the transfer of said estate is subject to the tax provided in Article 5, Chap. 66, S. L. of Oklahoma, 1935. The Government cannot recover the tax that has been paid to the State of Oklahoma. Judgment is for the defendant.

[fol. 146] The attorney for the defendant will prepare proper decree to be submitted to attorneys for plaintiff and to the Court for approval and entry of judgment on the thirtieth day of December, 1941.

Dated this 18th day of December, 1941.

Eugene Rice, District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

JUDGMENT—Filed December 30, 1941

Now on this 30th day of December, 1941, there came on for entry of judgment the above numbered and entitled cause pursuant to regular assignment, and as directed by the Court; the plaintiff, United States of America, appeared by Cleon A. Summers, United States Attorney, and William H. Landram, Assistant United States Attorney for the Eastern District of Oklahoma, and the defendant appeared by F. M. Dudley, Attorney for the Oklahoma Tax Commission of the State of Oklahoma, and no other appearances were made. The Court finds that heretofore the parties have entered into a written stipulation of facts and filed the same in said cause and that no other testimony was introduced. The Court further finds that both parties waived trial by jury and filed in said cause briefs and submitted said case on said briefs and stipulation of facts to the Court; the Court, after having considered the facts and briefs of both plaintiff and defendant, filed in said cause on the 18th day of December, 1941, Findings of Fact and Conclusions of Law.

It Is Therefore Ordered, Adjudged and Decreed by the Court that according to the Findings of Fact and Conclusions of Law filed herein, the defendant, Oklahoma Tax Commission of the State of Oklahoma, have judgment in its favor and judgment is therefore rendered for the defendant, Oklahoma Tax Commission of the State of Oklahoma, and it is adjudged that the defendant go hence without day; defendant to pay all cost.

Dated this 30th day of December, 1941.

Eugene Rice, District Judge.

OK as to form: Cleon A. Summers, William H. Landram, Attorneys for Plaintiff; F. M. Dudley, Attorney for Defendant.

[File endorsement omitted.]

NOTICE OF APPEAL—Filed March 28, 1942

Notice is hereby given that the United States of America, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Tenth Circuit from the final judgment entered in this action on December 30, 1941.

United States of America, by William H. Landram,
Assistant United States Attorney, Attorney for
Appellant, Federal Building, Muskogee, Oklahoma.

Notice of the Filing of Notice of Appeal

To: F. M. Dudley, Attorney for Oklahoma Tax Commission, State Capitol Building, Oklahoma City, Oklahoma.

Please take notice that the United States of America filed in the above styled case on the 28th day of March, 1942, a notice of appeal to the United States Circuit Court of Appeals for the Tenth Circuit.

Dated this 28th day of March, 1942.

John H. Pugh, Clerk, U. S. District Court for the Eastern District of Oklahoma, by Broaddus Martin, Deputy.

[fol. 148] **STATE OF OKLAHOMA,**
County of Muskogee, ss:

The undersigned, of lawful age, being first duly sworn upon his oath, deposes and states:

That on the 28th day of March, 1942, he enclosed a copy of the above and foregoing notice of appeal and notice of the filing of the notice of appeal in an envelope addressed to F. M. Dudley, Attorney, Oklahoma Tax Commission, State Capitol Building, Oklahoma City, Oklahoma, and after securely sealing said envelope affiant states that he deposited it in the United States Post Office at Muskogee, Oklahoma, on the date aforesaid, and being United States Government mail required no postage.

John H. Pugh, Clerk, U. S. District Court for the Eastern District of Oklahoma, by Broaddus Martin, Deputy.

Subscribed and sworn to before me this 28th day of March, 1942. Eugene Wheeler, Notary Public.
My commission expires: 9-4-44. (Seal.)

I acknowledge receipt of a copy of the Notice of Appeal from William H. Landram, Assistant United States Attorney for the Eastern District of Oklahoma, attorney for the plaintiff herein.

F. M. Dudley, Attorney for the Defendant Oklahoma Tax Commission.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION DESIGNATING PARTS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE INCLUDED IN THE RECORD ON APPEAL—
Filed May 5, 1942

It is stipulated and agreed by and between the plaintiff, United States of America, by William H. Landram, Assistant United States Attorney for the Eastern District of [fol. 149] Oklahoma, and the defendant, Oklahoma Tax Commission, by A. Francis Porta, attorney for said defendant, that the record on appeal in the above numbered and entitled cause shall include the following:

1. Complaint and Exhibits of Plaintiff.
2. Answer of Defendant.
3. Stipulation and agreement filed herein on July 15, 1941.
4. Order admitting certain patents and oil and gas lease into evidence.
5. Findings of Fact and Conclusions of Law.
6. Judgment.
7. Statement of points on which plaintiff intends to rely on appeal.
8. Stipulation designating parts of the record, proceedings and evidence to be included in the record on appeal.
9. Order Extending the Time for Filing the Record on Appeal and Docketing the Action.
10. Notice of Appeal.

Said stipulation and agreement is entered into by authority of Rule 75(f) Rules of Civil Procedure for the District Courts of the United States.

United States of America, Plaintiff, by William H. Landram, Assistant United States Attorney, Attorney for Plaintiff; Oklahoma Tax Commission, Defendant, by A. Francis Porta, Attorney for Defendant.

[File endorsement omitted.]

[fol. 150] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING THE TIME FOR FILING THE RECORD ON APPEAL AND DOCKETING THE ACTION—Filed May 2, 1942

Now on this 2nd day of May, 1942, for good cause shown, it is ordered that the time for filing the record on appeal and docketing the action is extended for a period of thirty (30) days from the date hereof.

Eugene Rice, Judge.

[File endorsement omitted.]

* * * * *

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 151] IN UNITED STATES CIRCUIT COURT OF APPEALS

And thereafter the following proceedings were had in said causes in the United States Circuit Court of Appeals for the Tenth Circuit:

ORDER OF SUBMISSION

Seventh Day, September Term, Tuesday, September 15th, A. D. 1942. Before Honorable Orie L. Phillips, Honorable Walter A. Huxman and Honorable Alfred P. Murrah, Circuit Judges.

These causes came on to be heard and were argued by counsel, Norman MacDonald, Esquire, appearing for appellant, A. Francis Porta, Esquire, appearing for appellee.

Thereupon these causes were submitted to the court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

OPINION—November 13, 1942

Norman MacDonald, Atty., Dept. of Justice (Norman M. Littell, Asst. Atty. Gen., Cleon A. Summers, U. S. Atty., and John F. Cotter, Atty., Dept. of Justice, Were With Him on the Brief) for the United States

A. Francis Porta for appellee.

Before Phillips, Huxman, and Murrah, Circuit Judges

PHILLIPS, Circuit Judge, delivered the opinion of the court:

These cases involve the power of the state of Oklahoma to impose an inheritance tax upon the restricted estates of deceased full-blood Indians.

Lucy Bemore was a full-blood Seminole Indian, enrolled opposite Seminole Roll No. 1563. She died intestate December 23, 1932. She left surviving, her husband, Lewis Bemore, a one-fourth blood Creek Indian, and a son, Thomas, an unenrolled full-blood Seminole Indian, who inherited her estate in equal shares.

Wosey Deere was a full-blood Creek Indian, enrolled opposite Creek Roll No. 9546. She died September 2, 1938. She left surviving, her husband, Milford Thomas, a seven-eighths blood Cherokee Indian, and two daughters and one son, all full-blood Creek Indians, to whom her estate passed. [fol. 152] Nitey was a full-blood Seminole Indian, enrolled opposite Seminole Roll No. 1446. She died August 17, 1930. She left a will devising and bequeathing her estate, in equal shares, to her five surviving full-blood Seminole children.

Each of the three deceased Indians, respectively, at the time of her death was domiciled in and a resident of the state of Oklahoma. Oklahoma assessed an inheritance tax upon the transfer of each of their estates. The Secretary of the Interior paid the amount of each tax under protest, and the United States brought these actions pursuant to the provisions of 68 O. S. A. §1475, to recover the amounts paid, with interest.

Each of the deceased Indians died seized of lands, restricted against alienation, being homestead and surplus allotments or lands purchased with restricted funds title to

which was taken under a restricted form of deed, and personal property and cash held as trust funds in the custody and control of the Secretary of the Interior.

From judgments denying each of the several claims, the United States has appealed.

Under the first proviso of §9 of the Act of May 27, 1908, 35 Stat. 315, restricted lands of allottees of the Five Civilized Tribes which passed by inheritance¹ to full-blood Indian heirs remained subject to qualified restrictions. Under the amendment of April 12, 1926, 44 Stat. 239, lands passing to a full-blood Indian of the Five Civilized Tribes by devise are also subject to such qualified restrictions.¹ Hence, the lands which passed by inheritance to the full-blood heirs of Bemore and Deere and by devise to the full-blood devisees of Nitey remained subject to qualified restrictions.²

Sec. 23 of the Act of April 26, 1906, 34 Stat. 137, 145, as amended by §8 of the Act of May 27, 1908, 35 Stat. 312, 315, [fol. 153] authorized a member of the Five Civilized Tribes to devise and bequeath all of his estate, real and personal, including his restricted allotments, without restriction or condition, but provided that a will of a full-blood Indian devising real estate should not be valid if it disinherited the "parent, wife, spouse, or children" of such full-blood Indian, unless it was acknowledged before and approved by a judge of the United States Court for the Indian Territory, a United States Commissioner, or a judge of a county court of the state of Oklahoma.³

Ch. 162, O. S. L. 1915 (O. S. 1931, 12469), applicable to the Bemore estate, in part reads:

"A tax is hereby laid upon the transfer to persons * * * of property * * *

¹ Whitchurch v. Crawford, 10 Cir., 92 F. 2d 249, 251; Burgess v. Nail, 10 Cir., 103 F. 2d 37, 42.

² Parker v. Richard, 250 U. S. 235, 238; United States v. Gypsy Oil Co., 8 Cir., 10 F. 2d 487, 489; Holmes v. United States, 10 Cir., 53 F. 2d 960, 961; United States v. Mid-Continent Petroleum Corp., 10 Cir., 67 F. 2d 37, 42; Commissioner v. Owen, 10 Cir., 78 F. 2d 768, 775; Glenn v. Lewis, 10 Cir., 105 F. 2d 398, 400.

³ See Wilson v. Greer, 50 Okl. 387, 151 P. 629, 630.

"First: By will or the intestate laws of this state; * * *"

Ch. 66, Art. 5, O. S. L. 1935, applicable to the Deere and Nitey estates, in part reads as follows:

"A tax is hereby levied upon the transfer of the net estate of each decedent, * * * to persons, * * * by will or the intestate laws of this state, * * *"

There is nothing in the treaties or acts of Congress which expressly exempts estates of members of the Five Civilized Tribes from the imposition of an inheritance tax.⁴ Congress has not expressly consented to the imposition of such a tax.

The United States contends that the property passed, not under the laws of Oklahoma and not with Oklahoma's permission, but under federal law, and that the restricted estates were federal instrumentalities and not subject to tax by the state without the assent of the Federal government.

The Oklahoma Enabling Act of June 16, 1906, 34 Stat. 267, § 21 provides that:

"* * * all laws in force in the Territory of Oklahoma at the time of the admission of said State into the Union shall be in force throughout said State, except as modified [fol. 154] or changed by this Act or by the constitution of the State, and the laws of the United States not locally inapplicable shall have the same force and effect within said State as elsewhere within the United States."

By § 1 of the Oklahoma Enabling Act, 34 Stat. 267, Congress provided that nothing contained in the constitution of Oklahoma should be construed to limit or impair "the rights of persons or property pertaining to the Indians" within Oklahoma or to limit or affect the authority of the United States to make any law or regulation respecting such Indians, their lands, property or other rights by treaties, agreement, law or otherwise.

Sec. 2 of the Schedule of the Oklahoma Constitution provides that "All laws in force in the Territory of Oklahoma at the time of the admission of the State into the Union, which are not repugnant to this Constitution, and which are not locally inapplicable, shall be extended to and re-

⁴ Landman v. Commissioner, 10 Cir., 123 F. 2d 787.

main in force in the State of Oklahoma until they expire by their own limitation or are altered or repealed by law."

By the Act of April 28, 1904, 33 Stat. 573, § 2, Congress declared that all laws of Arkansas theretofore put in force in the Indian Territory should be taken "to embrace all persons and estates in said Territory, whether Indian, freedmen, or other wise." The adoption of the Arkansas law was intended to be merely provisional.⁵ The provisions of the Enabling Act above quoted substituted the Oklahoma law of descent for that of Arkansas theretofore put in force in the Indian Territory.⁶

In *Childers v. Beaver*, 270 U. S. 555, 559, involving the power of the state of Oklahoma to impose an inheritance tax upon the transfer of the restricted estate of a deceased Quapaw Indian, the court said:

"Congress provided that the lands should descend and directed how the heirs should be ascertained. It adopted [fol. 155] the provisions of the Oklahoma statute as an expression of its own will—the laws of Missouri or Kansas, or any other State, might have been accepted. The lands really passed under a law of the United States, and not by Oklahoma's permission.

"It must be accepted as established that during the trust or restrictive period Congress has power to control lands within a State which have been duly allotted to Indians by the United States and thereafter conveyed through trust or restrictive patents. This is essential to the proper discharge of their duty to a dependent people; and the means or instrumentalities utilized therein cannot be subjected to taxation by the State without assent of the federal government."⁷

In *Childers v. Pope*, —Okl.—, 249 P. 726, 728, the Supreme Court of Oklahoma said:

"We therefore must hold that the real estate and the mineral interests in this case were cast under the law of the United States, which adopted the Oklahoma Statute. * * * We are of the opinion that the inheritance tax is

⁵ *Shulthis v. McDougal*, 225 U. S. 561, 571;
Jefferson v. Fink, 247 U. S. 288, 292.

⁶ *Jefferson v. Fink*, 247 U. S. 288, 294.

⁷ See, also, *Childers v. Pope* —Okl.—, 249 P. 726.

authorized to be assessed, levied, and collected by the state or the United States, and the authority is given for the privilege of allowing or authorizing a party to transmit by a will, deed, or conveyance to be operative after the death of decedent, or by operation of law in case of an intestate decedent, under the laws of descent and distribution applicable to the transfer of said estate. * * * Under the Beaver Case, it being held that the real property passed by permission of the laws of the United States, and not by Oklahoma law, then, no inheritance tax can be collected by plaintiff against the allotment, inherited lands, or tribal mineral interests of the deceased."

The power to assess an inheritance tax rests on the principle that since the rights to receive or transmit property are not natural rights, but are creatures of the legislature, [fol. 156] they are completely subject to taxation and control by the authority which created them.⁸

Under the holding in *Childers v. Beaver*, *supra*, and *Childers v. Pope*, *supra*, in the instant cases, the rights of the deceased Indians to transmit the property, and the rights of the heirs and beneficiaries to receive such property, flowed not from state laws as such, but from laws of the United States, and the property passed with the permission of the United States rather than with Oklahoma's permission. It follows that Oklahoma may not impose an

- * *People v. McCormick*, 327 Ill. 547, 158 N. E. 861, 864; *Stebbins v. Riley*, 268 U. S. 137, 140;
- Chanler v. Kelsey*, 205 U. S. 466 (dissenting opinion of Mr. Justice Holmes, pp. 479, 480);
- In re Anderson's Estate*, — Iowa —, 218 N. W. 140, 142;
- In re Fish's Estate*, 219 Mich. 369, 189 N. W. 177, 178, 179;
- Strauss v. State*, 36 N. D. 594, 162 N. W. 908, 909;
- In re Watson's Estate*, 226 N. Y. 384, 123 N. E. 758, 761;
- In re Shepherd's Estate*, 271 N. Y. S. 120, 122;
- In re Dillingham's Estate*, — Cal. 238 P. 367, 370;
- State v. Walker*, — Mont. —, 226 P. 894, 896;
- In re Heck's Estate*, — Ore. —, 250 P. 735, 737;
- In re Sherwood's Estate*, 122 Wash. 648, 211 P. 734, 737.

inheritance tax upon the passing of the estates herein involved.

It is true that the instrumentality doctrine, as applied to restricted lands of Indians, has been limited by the decision of the Supreme Court of the United States in *Helvering v. Mountain Producers Corporation*, 303 U. S. 376, 383-387, which expressly overruled the *Coronado* and *Gillespie* Cases,⁹ but *Childers v. Beaver*, *supra*, has not been overruled, and this court is still bound by that decision.

Restricted Indians in Oklahoma enjoy the privileges and protection of local laws. The local courts are open to them for the redress of grievances. The estates of deceased members of the Five Civilized Tribes are administered in the county courts of Oklahoma. Their wills are probated and their heirs determined in such courts. Members of the Five Civilized Tribes are citizens of Oklahoma¹⁰ and enjoy the privileges and benefits of that citizenship. It would seem [fol. 157] to the writer of this opinion that the Enabling Act should be construed as consenting to the application of the local law of Oklahoma with respect to the devolution of property of Indians who are domiciled in and residents of that state, and that such property should be regarded as passing under the laws of Oklahoma and subject to inheritance tax by Oklahoma, but that view could only prevail if *Childers v. Beaver*, *supra*, were overruled. Whether it shall stand or be overruled, only the Supreme Court of the United States may decide.

The judgments are Reversed and the causes Remanded, with instructions to enter judgments for the amount of the tax paid on the transfer of each estate, with interest at three per cent per annum from the date of the respective payments.

MURRAH, dissenting.

Admittedly, there is no inhibition against the asserted power of the State of Oklahoma to tax the transmission of the Indian estates here involved, if the property passes under the laws of the State of Oklahoma, but the majority hold that the Indian estates here involved pass under Fed-

⁹ *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393; *Gillespie v. Oklahoma*, 257 U. S. 501.

¹⁰ *Palmer v. Cully*, 52 Okl. 454, 153 P. 154, 157.

eral law and not under the laws of Oklahoma. This conclusion is reached by force of *Childers v. Beaver*, 270 U. S. 555, which considered the same question under an entirely different Federal statute relating to the disposition of Indian estates. The Act of June 25, 1910, 36 Stat. 855, as amended February 14, 1913, 37 Stat. 678, upon which *Childers v. Beaver*, *supra*, is predicated, relates to Indians other than members of the Five Civilized Tribes, and specifically exempts from its application members of those tribes.

Under the express provisions of this Act, *supra*, "it was the duty of the Secretary of the Interior to determine the heirs according to the state law of descent", but Congress provided how the lands should descend and directed how the heirs should be ascertained. The law of descent in Oklahoma is applicable only insofar as it is made a criterion for the guidance of the Secretary of the Interior, whose administrative duty it is to approve the execution of a will [fol. 158] by an Indian ward, or to disapprove the same without regard to the law of Oklahoma. It is only after the disapproval of the will that the Secretary of the Interior is directed to determine heirship in accordance with the laws of Oklahoma. In no event does the law of Oklahoma have any operation or effect upon the execution of the will or the validity thereof. Neither are the courts of Oklahoma utilized to determine heirship in the event its laws become relevant. But the determination of heirship is an administrative function entrusted to the Secretary of the Interior, guided by local law. The probate courts of Oklahoma have no jurisdiction over the will or the determination of the heirship. *Blanset v. Cardin*, 256 U. S. 319; *Hanson v. Hoffman*, 113 F. 2d 780.

But with respect to members of the Five Civilized Tribes, the Congressional policy as expressed by numerous statutes is entirely different. The history relating to the application of the laws of Oklahoma to the Five Civilized Tribes, including the law of descent, is well stated by the majority and need not be repeated here. It is sufficient to say that long prior to statehood, the prevailing law in the Indian Territory was applicable uniformly to the Indian as well as the white man. The Indian citizen was equally entitled to its protection and equally amenable to its processes.

With exceptions not material here, a member of the Five Civilized Tribes is authorized to dispose of his or her estate on the same footing as any other citizen. They are author-

ized to dispose of their estates by will in accordance with the laws of Oklahoma and not in derogation thereof. The law of Oklahoma is not merely a guide or criterion, but it creates the right and provides the means and manner of disposition. *Jefferson v. Fink*, 247 U. S. 288; *Blundell v. Wallace*, 267 U. S. 373; see also *Caesar v. Burgess*, 103 F. 2d 503.

In my judgment, the valid distinction made clear by a comparison of *Blanset v. Cardin*, *supra*, and *Blundell v. Wallace*, *supra*, furnishes the basis for the denial of the taxing power of the state in *Childers v. Beaver*, *supra*, and the sanction of that power under the attendant circumstances. In *Blanset v. Cardin*, *supra*, the property was transmitted under and by virtue of an Act of Congress [fol. 159] which provided the means and manner by which the property would pass, and its passing depended upon the ministerial determination of the Secretary of the Interior, and not the courts of Oklahoma. The law of Oklahoma had relevancy only as a guiding principle which acted only by force of the administrative agency empowered to administer it. While in *Blundell v. Wallace*, *supra*, the laws of Oklahoma and the courts which interpreted them were made the arbiters of the right to direct the testamentary disposition, and the law of descent determined its disposition. As respects members of the Five Civilized Tribes, the right to dispose of their property by will is created by the law of Oklahoma. The executed will is valid according to Oklahoma law and it is enforceable only in the courts of that state. In the absence of a will, the right to inherit is created by Oklahoma law and is enforceable in its courts and not elsewhere or otherwise. Therein lies the incidence of the tax and power to enforce it.

It is true that the laws of Oklahoma are made applicable and control the disposition of the property in virtue of a Congressional will, but I do not suppose that because the state law is made operative by will of Congress that the force of the law is any more impotent than if it had been derived from any other source from which the state exercises its sovereign powers.

Here the State of Oklahoma has by the force of its uniform laws as a sovereign state afforded a protection and conferred benefits for which it may exact a uniform tax. These estates are not tax-free instrumentalities of the Federal government, and the Federal government may and has

exacted a similar tax. *Landman v. Commissioner*, 123 F. 2d 787. The state act imposing the tax does not expressly or inferentially exempt from its scope the transmission of Indian estates. Neither has the Federal government expressly or inferentially exercised its indubitable power to exempt the transmission of the estates from the scope of the state taxing act. Nothing stands in the way of the exaction of the tax except the question of whether the property passes under the laws of the state. In my judgment, it does and the tax should be sustained.

[fol. 160] IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT, CASE No. 2558—November 13, 1942

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby reversed; that this cause be and the same is hereby remanded to the said district court with instructions to enter judgment for the amount of the tax paid, with interest at three percent per annum from the date of payment; and that United States of America, appellant, have and recover of and from Oklahoma Tax Commission of the State of Oklahoma, appellee, its costs herein and have execution therefor.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT, CASE No. 2559—November 13, 1942

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby reversed; that this cause be and the same is hereby remanded to the said district court with instructions to enter judgment for the

amount of the tax paid, with interest at three percent per annum from the date of payment; and that United States of America, appellant, have and recover of and from Oklahoma Tax Commission of the State of Oklahoma, appellee, its costs herein and have execution therefor.

[fol. 161] IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT, CASE No. 2560—November 13, 1942

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby reversed; that this cause be and the same is hereby remanded to the said district court with instructions to enter judgment for the amount of the tax paid, with interest at three percent per annum from the date of payment; and that United States of America, appellant, have and recover of and from Oklahoma Tax Commission of the State of Oklahoma, appellee, its costs herein and have execution therefor.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER GRANTING STAY OF MANDATES—December 9, 1942

These causes came on to be heard on the motion of appellee for a stay of the mandates herein and were submitted to the court.

On consideration whereof, it is now here ordered by the court that said motion be and the same is hereby granted; that no mandates of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under Section 3 of Rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the cases by the Supreme Court.

[fol. 162] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 163] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 623

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed February 15, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Clerk's note: Similar orders were entered in Nos. 624 and 625.

(5047)